

Immanuel Herrmann, *Pro Se*
Daniel A. Frishberg, *Pro Se*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
CELSIUS NETWORK LLC, <i>et al.</i> , ¹)	Case No. 22-10964 (MG)
)	
Debtors.)	(Jointly Administered)
)	

**PROPOSED WITNESS LIST AND EXHIBIT LIST FOR THE 2/15/23 HEARING ON
MOVANTS' APPLICATION FOR THE APPOINTMENT OF A TRUSTEE AND
DEBTORS' SECOND MOTION FOR ENTRY OF AN ORDER (I) EXTENDING THE
DEBTORS' EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT
ACCEPTANCES THEREOF PURSUANT TO SECTION 1121 OF THE BANKRUPTCY
CODE AND (II) GRANTING RELATED RELIEF**

Immanuel Herrmann and Daniel A. Frishberg hereby file their Proposed Exhibit List for the
hearing² commencing on February 15, 2023, at 10:00 a.m. (prevailing Eastern Time) (the
“Hearing”) as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

² It appears the Debtors have scheduled the hearing as a status conference to help resolve evidence disputes, as we requested. Therefore, we are filing this as a proposed starting point for evidence to enter into the record, and for the types of documents we would like to request discovery of. We also reserve the right to enter evidence below in support of our objections to extending exclusivity, if the doing so is permitted by the Court.

WITNESSES

If we are unable to resolve our discovery requests another way, schedule depositions, or otherwise find a mutually-agreeable resolution to our Motion,³ we may call the following witnesses at a future hearing, pending approval by the Court:

David Barse, Alan Carr, Christopher Ferraro

Notably, the Debtors submitted a declaration by Alan Carr in response to our Motion, even though the concerns we have raised are primarily about David Barse—the Special Committee member who had a long relationship with Mr. Mashinsky before the bankruptcy (See No. 9 / Exhibit B).

EXHIBITS

No.	Description	M a r k	f r e c t	O b j e c t	A d m i n i s t r a t o r y	W/D	Docket No.
1	Final Report of Shoba Pillay, Examiner, 1956						
2	Interim Report of Shoba Pillay, Examiner, D.R. 1411						
3	Motion for Order to Show Cause Why the Debtors Should Not Retain Willis Towers Watson, D.R. 2042						

³ We do not believe this to be an evidentiary hearing or that there will be any witnesses. It appears that the Debtors have consented to a status conference. (See D.R. 2048, p.8.) We reserve the right to cross-examine any witness called by the Debtors or any other party, and to cross-examine any of the Debtors' declarants.

4	Video Transcript of Celsius Network AMA, July 24, 2020, D.R. 1559 Exhibit A (p. 43)					
5	Final Report of Shoba Pillay, Examiner, APPENDIX 5, TABLE OF SERIES A AND SERIES B INVESTORS (from D.R. 1956)					
6	Final Report of Shoba Pillay, Examiner, APPENDIX 2, CELSIUS EXECUTIVE DIRECTORS, EXECUTIVE LEADERSHIP AND OTHER KEY EMPLOYEES (from D.R. 1956)					
7	Transcript from Celsius Network Limited et al v. Stone et al, 22-01139, D.R. 73					
8	"What goes into protecting Assets? - CEL Bites," attached below as Exhibit A					
9	Transcript - "MOIP Interview with David Barse CEO XOUT Capital, June 17, 2020," attached below as Exhibit B					
10	Transcript of HEARING re Motion by Celsius Network LLC lifting the automatic stay and granting leave to file late proof of claim, attached below as Exhibit C					
11	In Re Voyager - Motion to File Proof of Claim After Claims Bar Date / Updated Motion of Celsius Network LLC for Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1), D.R. 789, attached below as Exhibit D					
12	In Re Voyager - Objection to Motion // Objection of the Official Committee of Unsecured to Celsius Network LLCs Motion Seeking an Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. § 362(D)(1) and Bankruptcy Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rule 3003(C) and 9006(B)(1), D.R. 866, attached below as Exhibit E					
13	In Re Voyager - Objection Debtors' Objection to Motion of Celsius Network LLC for Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1), D.R. 867, attached below as Exhibit F					
14	Declaration of Michael C. Whalen in Support of Debtors' Objection to Motion of Celsius Network LLC for Order (i) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(10 and bankruptcy rule 4001 and (ii)					

	Granting Leave to file Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1), attached below as Exhibit G					
15	Transcript of Christopher Ferraro deposition, November 21, 2022, attached below as Exhibit H					
15	"Third Avenue Management CEO David Barse Departs," Wall Street Journal, December 14, 2015, attached below as Exhibit I					
16	"How the Third Avenue Fund Melted Down," Wall Street Journal, December 23, 2015, attached below as Exhibit J					
17	February 24, 2021 Tweet by Nuke Goldstein: "We give every tool and opportunity to the user to avoid liquidation. We liquidate as a very last resort. Unfortunately there are companies who see this as an opportunity to take profits on the back of their customers. This is bank mentality," attached below as Exhibit K					
18	April 23, 2021 Tweet by Nuke Goldstein: "@CelsiusNetwork is the only company in the industry that is fighting hard NOT to liquidate it's customers," attached as Exhibit L					
19	In The Matter Of Determining Whether There Has Been A Violation Of The Uniform Money Services Act Of Washington And Consumer Loan Act Of Washington By: Celsius Network, Inc, No. C-19-2750-19-CO01. Consent Order entered on September 16, 2019 by the State of Washington, Department of Financial Institutions, Division of Consumer Services, attached as exhibit M					
20	In the Matter of Celsius Network, LLC, Summary Cease And Desist Order entered on September 17, 2021 by the New Jersey Bureau of Securities against Celsius Network LLC , attached as Exhibit N					
21	Emergency Order to Cease and Desist Order entered on September 23, 2021 by the Commonwealth of Kentucky, Public Protection Cabinet, Department of Financial Institutions, Division of Securities, Exhibit O					
22	Statement Of Charges And Notice Of Intent To Enter Order To Cease And Desist, To Impose A Fine, And To Charge Costs entered on October 20, 2021 by the State of Washington, Department Of Financial Institutions Securities Division, Exhibit P					
23	Notice of Hearing seeking entry of Cease and Desist Order dated September 17, 2021, Exhibit Q					
24	The People of the State of New York vs. Alex Mashinsky dated January 5, 2023, Exhibit R					
25	Goines v. Celsius Network, LLC, Celsius Lending, LLC, Celsius KeyFi, LLC, Alexander Mashinsky, Shlomi "Daniel" Leon, David Barse, and Alan Jeffrey Carr. Class Action Complaint and Demand for					

	Jury Trial, dated July 13, 2022, Exhibit S						
26	Graham, Peter, Topics, Email (March 15, 2022), CEL-UCC-00208695, Document from Examiner Report Footnote 1022*						
27	Graham, Peter, May 27 YouTube AMA – Needed Edits, Email (May 27, 2022), CELUCC-00207086*, Document from Examiner Report Footnote 1037*						
28	Sunada-Wong, Rodney, Communication Risk, (January 28, 2022) CEL-UCC00208957; Cohen-Pavon, Roni, Re: AMA YouTube Dec 10 -needed edits, Email (January 1, 2022) CEL-UCC-00207526; McCarthy, Tom, Fwd: April 22 YouTube AMA – Needed Edits, Email (June 21, 2022) CEL-UCC-00207932*						
29	Celsius, Slack between Tappen, Dean and Ferraro, Chris (April 13, 2022), CEL-UCC0008309 (In an April 13, 2022 Slack channel discussion between Mr. Tappen and Mr. Ferraro, Mr. Tappen wrote, “we have paid USD out to top employees totaling \$40,154,760.87 due to CEL buybacks . . . top employees being Alex, Daniel, nuke, etc”)*						
30	Corporate records regarding who appointed Mr. Barse, Mr. Carr, and Mr. Ferraro to their current roles, and who appointed them to all former roles at Celsius (including, but not limited to, who appointed Mr. Ferraro to the CFO role.)*						

Documents with a * are requested by the Movants. We reserve the right to ask for more of these documents not in our possession but contained in the Examiner’s report, and have requested a status conference at the February 15 hearing to get more discovery, including items included in the Examiner’s report, such as Nos. 26-29 above, and discovery about who appointed Mr. Ferraro, Mr. Barse, and Mr. Carr (No. 30 above).

RESERVATION OF RIGHTS

The purpose of this proposed witness and exhibit list is to inform the parties of types of materials that we intend to enter into evidence. The Movants reserve the right to supplement or amend this Witness and Exhibit List and to identify additional exhibits and witnesses in the future.

Respectfully submitted,

s/ Daniel A. Frishberg

Daniel A. Frishberg
February 13, 2023

s/ Immanuel Herrmann

Immanuel Herrmann
February 13, 2023

Exhibit A: Transcript - What goes into protecting Assets? - CEL Bites

Accessed at <https://www.youtube.com/watch?v=x-X0xmzO8Vg&t=2s> on 2/13/2023

Zach Wildes: Alright, everyone's always asking about insurance. But it's not just about having insurance, right? There's a lot that goes into that there, protecting assets.

Alex Mashinsky: Right, so again, people tell you "we have insurance, we have insurance." Well, what does the insurance cover, right? Oh, it covers if we get hacked. If the insurance covers when you get hacked and you have all of the assets sitting in your cold storage, then how are you earning yield, right? Earning yield means you lent out the coins to somebody... to an institution, to a retail user, to an exchange, to DeFi, right? So, so, it's all about managing the risk and managing the deployment. Like Nuke needs to worry about multi-sig and how do I manage keys on exchanges or on DeFi on or wherever else to make sure that the coins come back to us, right? And that's all that matters. If, if you see that our wallets have \$5 billion in assets, 5 out of 6 are sitting in our wallets and we keep paying you interest, you should be super worried.

Nuke Goldstein: And by the way one of the benefits of moving to MPC is that insurers actually are willing to insure hot wallets.

Alex Mashinsky: That's right.

Nuke Goldstein: So we have, uh, I think a 30...

Alex Mashinsky: 30 million dollar insurance

Nuke Goldstein: and we're increasing it to 100...

Alex Mashinsky: The only ones, the only ones with a hot wallet insurance...

Nuke Goldstein: Yes.

Alex Mashinsky: Because like Nuke said we have MPC

Nuke Goldstein: Yeah.

Alex Mashinsky: So again so the point is is you want to see deployment, you want to see no hacks, you want to see, uh MPC and all that stuff coming in, you want to see full transparency like proof of community and so on and so on and, and, and otherwise what kind of business is this? Again, BlockFi loses money on every transaction they're just trying to make it up in volume when they go public.

Nuke Goldstein: It's very Silicon Valley-esque.

Alex Mashinsky: Exactly.

DECLARATION WITH RESPECT TO THE ABOVE TRANSCRIPT

I, Immanuel Hermann, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the transcript appearing above is a true and correct transcript of the video at <https://www.youtube.com/watch?v=x-X0xmzO8Vg&t=2s>, accessed by me and transcribed by me on February 13, 2023.

s/ Immanuel Herrmann

Immanuel Herrmann

February 13, 2023

Exhibit B: Transcript - MOIP Interview with David Barse CEO XOUT Capital, June 17, 2020

Intro

Alex Mashinsky: Welcome everybody to another episode of MOIP or money over Internet Protocol, and today I have a special guest somebody I've known for a very long time, David Barse, who spent most of his career on Wall Street and can tell us a lot of the things that you guys want to know, so I'll be asking him a bunch of questions and hopefully he'll give us all the all the inside knowledge that he collected in 30-something years being on Wall Street. Thank you David for joining.

David Barse: It's my pleasure to be here, especially for you Alex.

DECLARATION WITH RESPECT TO THE ABOVE TRANSCRIPT

I, Immanuel Hermann, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the transcript appearing above is a true and correct transcript of the video at <https://www.youtube.com/watch?v=x-X0xmzO8Vg&t=2s>, accessed by me and transcribed by me on February 13, 2023

s/ Immanuel Herrmann
Immanuel Herrmann
February 13, 2023

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10943-mew

4 - - - - - x

5 In the Matter of:

6

7 VOYAGER DIGITAL HOLDINGS, INC.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 January 24, 2023

17 11:03 AM

18

19

20

21 B E F O R E :

22 HON MICHAEL E. WILES

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KB

1 HEARING re Motion by Celsius Network LLC lifting the
2 automatic stay and granting leave to file late proof of
3 claim Objections filed
4

5 HEARING re Second motion extending the Debtors' exclusive
6 periods to file a chapter 11 plan and solicit acceptances
7 thereof and granting related relief

8 ***CERTIFICATE OF NO OBJECTION FILED***
9

10 HEARING re Application authorizing the retention and
11 employment of Katten Muchin Rosenman LLP as special counsel
12 for Debtor on behalf of and at the sole direction of the
13 independent director, effective as of November 11, 2022

14 ***CERTIFICATE OF NO OBJECTION FILED***
15

16 HEARING re Application authorizing the retention and
17 employment of ArentFox Schiff LLP as special counsel
18 effective as of November 10, 2022

19 ***CERTIFICATE OF NO OBJECTION FILED***
20

21 HEARING re Application authorizing the retention and
22 employment of Potter Anderson & Corroon LLP as Delaware
23 counsel effective as of November 30, 2022

24 ***CERTIFICATE OF NO OBJECTION FILED***
25

1 HEARING re Final hearing RE: motion authorizing the Debtors
2 to continue to operate their cash management system, honor
3 certain prepetition obligations related thereto, maintain
4 existing business forms, and continue to perform
5 intercompany transactions, granting superpriority
6 administrative expense status to postpetition
7 intercompany balances, and granting related relief
8 Limited objection filed
9 Adjourned Reset for 02/07/2023 at 10:00 am

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24
25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 KIRKLAND & ELLIS LLP

4 Attorneys for the Debtor

5 601 Lexington Avenue

6 New York, NY 10022

7

8 BY: ALLYSON SMITH

9

10 KATTEN MUCHIN ROSENMAN LLP

11 Attorneys for the Debtor

12 575 Madison Avenue

13 New York, NY, 10022

14

15 BY: SHAYA ROCHESTER

16

17 UNITED STATES DEPARTMENT OF JUSTICE

18 Attorneys for the U.S. Trustee

19 201 Varick Street, Suite 1006

20 New York, NY 10014

21

22 BY: RICHARD MORRISSEY

23

24

25

1 ARENT FOX SCHIFF

2 Attorneys for Scott Vogel, as the Independent Director

3 of Voyager Digital Holdings, Inc.

4 1301 Avenue of the Americas

5 New York, NY, 10019

6
7 BY: JEFFREY GLEIT

8
9 PAUL HASTINGS

10 Attorneys for Voyager Digital Holdings, Inc., et al.

11 71 South Wacker Drive

12 Chicago, IL, 60010

13
14 BY: MATTHEW MURPHY

15 MICHAEL C. WHALEN

16
17 AKIN GUMP STRAUSS HAUER & FELD LLP

18 Attorneys for Celsius Network LLC

19 One Bryant Park

20 New York, NY 10036

21
22 BY: MITCHELL P. HURLEY

23 DEAN CHAPMAN

1 MCDERMOTT WILL & EMERY LLP

2 Attorneys for Official Committee of Unsecured Creditors

3 of Voyager Digital Holdings, Inc., et al.

4 340 Madison Avenue

5 New York, NY 10173

6

7 BY: DARREN AZMAN

8

9 ALVAREZ AND MARSAL

10 Attorneys for Celsius Network LLC

11 540 West Madison Street

12 Chicago, IL, 60661

13

14 BY: HOLDEN BIXLER

15

16 CHRIS FERRARO, Celsius

17

18 ALSO PRESENT TELEPHONICALLY:

19 DANIEL M. EGGERMANN

20 ETHAN TROTZ

21 ERIC REUBEL

22 LAUREN KELLY GREENBACKER

23 RICHARD COCHRANE

24 ANGELA HERRING

25 BENJAMIN NICKERSON

1 GREGORY PESCE
2 TOM ST. HENRY
3 ADAM SWINGLE
4 BENJAMIN BELLER
5 DAVID TURETSKY
6 RICK ARCHER
7 STEVEN REISMAN
8 MARTIN ALLOCATI
9 LETICIA SANCHEZ
10 JEFF STAPLETON
11 COURTNEY STEADMAN
12 VICTOR UBIERNA DE LAS HERAS
13 JASON DIBATTISTA
14 CATHY TA
15 TAYLOR HARRISON
16 RANDALL PULMAN
17 ERIK HANNER
18 LUKE PORCARI
19 DUSTIN PETERSON
20 SUSAN GOLDEN
21 CHRISTINE OKIKE
22 CHRISTOPHER SAMIS
23 KATHERINE SCHERLING
24 JASON ROSELL
25 NACIF TAOUSSE

1 JONATHAN WEICHSELBAUM
2 MICHAEL SLADE
3 NATALIE THOMPSON
4 MARCIO FERREIRA
5 MATTHEW CHERRY
6 LISA PROVINO
7 TRACY HENDERSHOTT
8 JACOB BALTAYTIS
9 KELLY MOYNIHAN
10 PAUL ROSENBLATT
11 JAMES NANI
12 CAROLINE ELLIS
13 JOSEPH EVANS
14 CHARLES GIBBS
15 GREGG STEINMAN
16 GRAYSON WILLIAMS
17 CRAIG RASILE

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1 P R O C E E D I N G S

2 THE COURT: Good morning, everybody. Are the
3 parties ready on the Voyager matter?

4 MS. SMITH: Good morning. Yes, Your Honor.

5 THE COURT: (Indiscernible) --

6 MS. SMITH: For the record -- I apologize. For
7 the record, Allyson Smith from Kirkland and Ellis, counsel
8 to the Debtors. We only have a handful of matters on the
9 agenda today, most of which are uncontested and for which we
10 filed certificates of no objection. So unless Your Honor
11 prefers to proceed differently, I propose addressing those
12 first and then turning to the Celsius matter.

13 THE COURT: Yes, I think that makes sense.

14 MS. SMITH: Okay. Great. Thank you, Your Honor.
15 Skipping down then to Agenda Item Number 2, Debtor Voyager
16 Digital LTD's application to retain Katten as special
17 counsel on behalf of its independent director. In support
18 of the application, three declarations were filed, the
19 original by Mr. Steve Reisman, one supplemental by him
20 disclosing rate changes, and one by Mr. Matt Ray. We'd ask
21 that those three declarations be moved into evidence absent
22 objection.

23 THE COURT: Are there any objections to the
24 admission of the declarations into evidence? Does anyone
25 wish to cross-examine the declarants? All right. The

1 objections are -- excuse me, the declarations are admitted.

2 MS. SMITH: Thank you. We received no formal or
3 informal objections. And as I noted, we did file the CNO on
4 Friday. Unless the Court has any questions or concerns to
5 address, we would ask that this application be granted.

6 THE COURT: As to the Katten Muchin application,
7 if I recall correctly, there were some Creditors of TopCo
8 who raised some issues in connection with the plan that was
9 previously proposed about how some of the arrangements would
10 be treated, and whether it was fair to TopCo. Who were
11 those Creditors? Can you remind me?

12 MS. SMITH: I believe it may -- you may be
13 referred to the equity holders and --

14 THE COURT: (Indiscernible).

15 MS. SMITH: -- referencing the intercompany
16 obligations?

17 THE COURT: Yeah, maybe it was equity holders. I
18 can't remember.

19 MS. SMITH: Yeah, and that's actually precisely
20 what Katten is being retained to assist in that analysis as
21 to whether certain intercompany obligations are more
22 properly categorized as capital contributions or loans.

23 THE COURT: But the declaration says that Katten
24 also represents some people who hold debt of TopCo and may
25 continue to represent them in connection with trading

1 activities involving such debt. Is that right?

2 MS. SMITH: I believe the declaration states they
3 just represent a trade Creditor that has a pre-petition
4 claim of less than 75,000, and they've implemented screening
5 measures to wall off those representations.

6 THE COURT: Hang on. I'm not sure that's exactly
7 -- was that Otter Anderson or was that Katten Muchin?
8 Katten Muchin just says that they have represented certain
9 holders of TopCo debt in connection -- and will -- may
10 represent them in connection with trading activity involving
11 such debt. Is Katten on the phone? They can tell us what
12 that is.

13 MR. ROCHESTER: Yes, Your Honor. For the record,
14 Shaya Rochester from Katten Muchin. In the recent
15 declaration that was filed at Docket 718, there are specific
16 disclosures in Paragraph 25A. And there's a reference to
17 representing a trade Creditor of TopCo that has a pre-
18 petition (indiscernible) as Ms. Smith said, and screening
19 procedures are put in place. That is the only connection
20 other than that and then what was in B in terms of
21 representation of trade Creditors.

22 THE COURT: And is there any matter other than
23 these intercompany matters for which Katten would be
24 retained?

25 MS. SMITH: No, Your Honor.

1 THE COURT: Does TopCo have separate assets that
2 would enable it to pay counsel here?

3 MS. SMITH: I believe they do have a limited
4 number of assets.

5 THE COURT: Okay. And it's only TopCo that would
6 be obligated on this obviously, correct?

7 MS. SMITH: Correct.

8 THE COURT: All right. Does the U.S. Trustee have
9 any issue with this?

10 MR. MORRISSEY: Your Honor, Richard Morrissey for
11 the U.S. Trustee. The U.S. Trustee has reviewed all the
12 declarations and has no objection. Thank you.

13 THE COURT: Okay. I think I would like the order
14 to be a little more specific as to just what Katten Muchin
15 is going to be doing because it's not at all clear. It's a
16 rather vague description in the papers. If it's going to be
17 looking at the intercompany claims, then it should
18 correspond to the more specific order that you had for
19 ArentFox in that regard. Okay?

20 MS. SMITH: Of course. We can certainly revise
21 the order, Your Honor, and resubmit.

22 THE COURT: As to ArentFox, that affidavit says
23 that ArentFox represents the National Women's Soccer League
24 in these --

25 MS. SMITH: Yes.

1 THE COURT: -- cases. Is that correct?

2 MS. SMITH: Yes, but my understanding is that they
3 obtained a conflict waiver from the Women's Soccer League.

4 THE COURT: Does the U.S. Trustee have any issue
5 in that regard? Mr. Morrissey?

6 MR. MORRISSEY: I'm sorry, Your Honor. I was on
7 mute. The U.S. Trustee has no objection to that, and
8 accepts the fact that ArentFox did receive a waiver.

9 MR. GLEIT: And Your Honor, it's Jeff Gleit from
10 ArentFox. May I be heard?

11 THE COURT: Yes.

12 MR. GLEIT: Okay. Your Honor, just in addition to
13 the waiver, we also have an ethical law. So the attorneys
14 working on the Voyager matter on behalf of the independent
15 director are not involved with anything to do with the
16 National Women's Soccer League.

17 THE COURT: All right. Very good. I'll approve
18 those two retentions, and I don't have any issue as to
19 Potter Anderson. (Indiscernible) case, obviously you need
20 to have counsel there.

21 MS. SMITH: Thank you, Your Honor. We'll get the
22 revised Katten order submitted to you shortly after this
23 hearing.

24 THE COURT: Okay.

25 MS. SMITH: Moving then to the last item prior to

1 turning it over to Celsius is our exclusivity extension
2 motion. The Debtors are seeking to extend the exclusivity
3 period another 60 days to March 3rd, which as you know is
4 right after our scheduled confirmation hearing on the 2nd.
5 We did negotiate this with the Committee prior to filing it
6 in December, and the filed document incorporated their
7 comments. Otherwise, no objections or comments were
8 received, and a CNO was also filed on Friday. So unless
9 Your Honor has any additional questions, we would ask that
10 this order be entered.

11 THE COURT: Okay. Is there anybody on the phone
12 that wishes to be heard on this? Okay. I'll enter the
13 order. Just submit it to chambers.

14 MS. SMITH: Thank you, Your Honor. Will do. With
15 that then, I am going to cede the podium to the Paul
16 Hastings team, who will be handling the remaining matter.

17 THE COURT: Okay.

18 Thank you, Allyson. Good morning, Your Honor. My
19 name is Matt Murphy from Paul Hastings. Before turning it
20 over to my colleague Mike Whelan, I just wanted to address
21 with the Court and the Office of the United States Trustee
22 it was my expectation to get our retention application on
23 file last week. That obviously did not happen, and my
24 apologies to both Mr. Morrissey and the Court. My
25 expectation is that that will be on file today.

1 It is -- as Your Honor may recall, we were
2 operating or have been operating as ordinary course
3 professional counsel. Given the scope of our involvement,
4 we must at this point file a retention application to be
5 separately retained. And the scope is as it relates to
6 special regulatory counsel and then conflicts counsel as it
7 relates to this discrete issue with Celsius. I just wanted
8 the Court to be aware that -- and Mr. Morrissey to be aware
9 that that is forthcoming.

10 THE COURT: All right.

11 MR. MURPHY: Mike, I'll turn it over to you.

12 THE COURT: I assume nobody on the phone has any
13 objection to Mr. Murphy speaking on behalf of Voyager.

14 MR. MORRISSEY: Your Honor, Richard Morrissey for
15 the U.S. Trustee. I have no particular objection, but I
16 think it would be helpful for the Court to know, and I don't
17 know one way or another right now not having seen a
18 retention application, whether Paul Hastings has represented
19 any entity or individual in connection with Celsius. I just
20 want to make sure that there's conflict issue going in
21 before we hear the argument. Thank you.

22 MR. MURPHY: Yeah. The retention application will
23 show that Paul Hastings represents certain individuals in
24 the C Suite I guess is how I'll say it as it relates to
25 ongoing investigations and civil litigation matters

1 unrelated to this matter.

2 MR. MORRISSEY: Now, just to be clear, and I mean
3 to address Your Honor but addressing Mr. Murphy, the C --
4 this is the C Suite of Celsius?

5 MR. MURPHY: That's right.

6 MR. MORRISSEY: Okay. The U.S. Trustee can't take
7 a position on that, you know, not having seen the
8 explanation, but it certainly is a concern.

9 MR. MURPHY: Understood and happy to discuss
10 further once we get the application on file.

11 THE COURT: Mr. Hurley, were you about to say
12 something?

13 MR. HURLEY: Good morning, Your Honor. Mitch
14 Hurley with Akin Gump Strauss Hauer and Feld. I wasn't -- I
15 guess I was going to wait until Your Honor was ready for me,
16 but I am ready to proceed whenever you want me to.

17 THE COURT: Let me just ask as a preliminary
18 matter. Do you both agree that any preference claims
19 against Voyager here would relate to transfers that pre-
20 dated Voyager's bankruptcy case and therefore would be
21 unsecured claims in the Voyager case?

22 MR. HURLEY: So Celsius filed its bankruptcy case
23 about a week after Voyager's bankruptcy petition was filed.
24 It's -- I guess it's at least conceivable that a withdrawal
25 could've happened during the period after Voyager's petition

1 was filed and before Celsius' was filed. I confess I don't
2 have that information at my fingertips. But to the extent
3 the withdrawals and the transfers were prior to Voyager
4 petition being filed, I would agree, Your Honor.

5 THE COURT: Thank you. I looked at your -- the
6 declarations you submitted in that regard and I think they
7 were all before the Voyager filing date, but I could be
8 wrong.

9 MR. WHALEN: Yes, Your Honor. Michael Whalen from
10 Paul Hastings on behalf of Voyager. We would take that
11 position, and that's our understanding of the timing as
12 well.

13 THE COURT: So we're talking about a potential
14 \$5.9 million unsecured claim as well as I guess under 502(d)
15 an issue as to about -- potential issue as to about 1.1
16 million or so of items that remain with Celsius. Is that
17 correct?

18 MR. WHALEN: The total amount of the claim in the
19 90-day preference period, Your Honor, we understand is 7.7
20 million, but your numbers are obviously approximately right.

21 THE COURT: Can somebody from Paul Hastings help
22 me out? I thought I saw it was 5.9 that was withdrawn
23 because the total account was more like \$7 million if I got
24 the numbers wrong.

25 MR. MURPHY: Your Honor, we have a somewhat

1 different accounting internally, and it's our view on the
2 Voyager side that we would have to, you know, rectify that
3 if a claim is filed, but those numbers are approximately
4 right in the realm of 7.7. There's some uncertainty as to
5 how Celsius is treating those figures from our end, which is
6 understandable. We haven't seen their books and records,
7 they haven't seen ours, but we do contend that there's about
8 1.1 million still caught, for lack of a better word, on
9 Celsius' platform.

10 The remainder of any assets have made it into
11 Voyager's possession. That 1.1 million is in what's called
12 a withhold account, and it's our understanding that it's
13 Celsius' position that we have right and title over those
14 funds, but there is 1.1 million that's sort of in a little
15 bit of a limbo.

16 THE COURT: All right. And in your papers on
17 behalf of Voyager, Mr. Murphy, you've argued that any such
18 claim would be a huge portion of Class 4A, but aren't the
19 recoveries for Class 4A under the pending plan calculated by
20 reference to the larger pool that includes other types of
21 customer claims?

22 MR. WHALEN: This is Michael Whalen again, Your
23 Honor. Yes, and that is a point that we would like to
24 clarify. It is true we believe, and we don't believe that
25 Celsius has contested this, that their claim would fall into

1 Class 4A. And yes, they will be treated in the aggregate
2 with Class 3, the account holder claims. But the point that
3 we were trying to make is that they will constitute a large
4 portion of a class that could be subject to disparate
5 treatment. They are not under the plan. We don't
6 anticipate that that will be the case.

7 And we certainly don't think that will happen, but
8 it -- based on the negotiations and the understanding of the
9 relative creditor classes when this plan was formed, it was
10 a Class 4A that had about \$14 million in claims, and now
11 that's going to go up to 21 and change. So that was the
12 point that we were trying to make. I think our overriding
13 point is that while that is a huge portion of Class 4A and
14 should be considered, there are other factors that go into
15 the prejudice equation as well. So that's one piece of the
16 pie on prejudice.

17 THE COURT: But in terms of what you need to do to
18 make distributions and things like that, that's a drop in
19 the bucket, isn't it?

20 MR. WHALEN: It is a small amount relative to the
21 Class 3 size, but we think a law in the Southern District
22 and cases from Your Honor as well express the notion that
23 prejudice is not reduceable merely to the size of the claim,
24 and that there are other considerations, such as the
25 expectations of Creditors that did file by the bar date

1 that's also relevant. But yes, Your Honor.

2 THE COURT: Is there any other evidence on the
3 issues here that the parties think they need to gather and
4 to present to me, or that they would like to gather and
5 present to me?

6 MR. AZMAN: Your Honor, it's Darren Azman from
7 McDermott Will and Emery from the Committee. We would like
8 to cross all three of the declarants that submitted
9 declarations in support of the motion, but that's the only
10 additional evidence that we would like to introduce.

11 THE COURT: Okay. How about on behalf of the
12 Debtors or on behalf of Celsius?

13 MR. HURLEY: Not on behalf of Celsius, Your Honor.

14 MR. MURPHY: The Debtor -- Your Honor, with
15 respect to the Debtors, I think it's our position that
16 Celsius did not carry their burden to establish either form
17 of relief, but we'll be attentive to the cross and would
18 reserve our rights to participate in the cross, but we'll
19 allow the Committee to take the lead there.

20 THE COURT: All right. Well before I ask my own
21 questions about the underlying issues, maybe we should get
22 the evidentiary record set. And so is it your intent to
23 offer the declarations into evidence, Mr. Hurley?

24 MR. HURLEY: It is, Your Honor.

25 THE COURT: All right. Then maybe we should do

1 that one by one, and we should hear the cross-examinations.

2 MR. HURLEY: Okay. So there are two fact witness
3 declarations, Mr. Bixler and Mr. Ferraro. I also put in a
4 declaration. I'm not sure if I correctly understood that
5 McDermott -- that the UCC counsel also wants to cross-
6 examine me, but why don't we start with the fact witnesses?
7 So Chris Ferraro is the acting CEO of Celsius and submitted
8 a declaration, and Mr. Ferraro is available and on this case
9 for cross-examination. And Your Honor, we would offer his
10 declaration into evidence.

11 THE COURT: Let's start with does anybody object
12 to the admission of the declaration into evidence? All
13 right. The declaration is admitted into evidence. Is there
14 anybody other than the Committee who wishes to cross-examine
15 Mr. Ferraro? All right. Mr. Ferraro, I'm going to let the
16 Committee cross-examine you. Do you understand that the
17 answers that you give to their questions are to be given by
18 you under oath. And do you swear that the testimony you're
19 about to give is the truth, the whole truth, and nothing but
20 the truth? Mr. Ferraro, are you there? Is he on a speaking
21 line? Is he muted?

22 MR. FERRARO: -- mute. Can you hear me, Your
23 Honor?

24 THE COURT: I can now, yes. I couldn't before.

25 MR. FERRARO: Sorry. I'm learning the Court

1 Solutions site. I apologize.

2 THE COURT: No problem. Do you swear that the
3 answers to the questions you're about to give will be the
4 truth, the whole truth, and nothing but the truth, so help
5 you God?

6 MR. FERRARO: Yes, I do, Your Honor.

7 THE COURT: All right.

8 MR. HURLEY: Your Honor, before we begin, it's
9 Mitch Hurley again. My partner Dean Chapman is on the line,
10 and Mr. Chapman is going to handle the cross, objections,
11 and any redirect if necessary with the Court's permission.

12 THE COURT: Very good.

13 MR. CHAPMAN: Good morning, Mr. --

14 THE COURT: Go ahead.

15 MR. CHAPMAN: Thank you, Your Honor.

16 CROSS-EXAMINATION OF CHRIS FERRARO

17 BY MR. CHAPMAN:

18 Q Good morning, Mr. Ferraro.

19 A Good morning.

20 Q In Paragraph 8 of your declaration, you make a
21 conclusion that the bar date notice should've been provided
22 to Celsius US and Celsius EU instead of Celsius UK Is that
23 right?

24 A Yes, sir.

25 Q And in Paragraphs 6 and 7, you acknowledge that the bar

1 date notice was sent to Celsius UK, but you say that it was
2 an out-of-date address. That's right?

3 A Yes, sir.

4 Q When did Celsius UK move out of that address?

5 A On March 20, 2020 we filed the change of registered
6 address to 1 Bartholomew Lane, London.

7 Q And is that when -- sorry, was there more there, Mr.
8 Ferraro?

9 A No.

10 Q When did Celsius completely vacate that property?

11 A To my understanding right around that time. I wasn't
12 with the company at that time.

13 Q Okay. Can you tell me about the relationship between
14 Celsius US, Celsius EU, and Celsius UK?

15 A Yeah. The parent company would be UK and subsidiaries
16 US and EU.

17 Q And at the time that the bar date notice was sent to
18 what you described as the wrong address, and that was around
19 September 23, 2022, did Celsius US have any employees or
20 agents or any contractors who also performed functions for
21 either Celsius EU or Celsius UK?

22 A I don't know the answer to that, sir. I mean, we work
23 across -- we have a pool of employees that work across the
24 EU entities.

25 Q Okay. So it wouldn't surprise you if there were a

1 number of employees at Celsius, you know, the global
2 organization, that worked across Celsius U.S., Celsius EU,
3 and UK? That wouldn't surprise you?

4 A No, sir.

5 Q Okay.

6 A That wouldn't.

7 Q Do you know if there are any shared officers or
8 directors between those three entities?

9 A I don't have that in front of me. I apologize.

10 Q Okay, but that's possible?

11 A Yes, it's possible.

12 Q Okay. What do you believe is the correct address that
13 Voyager should've mailed the bar date notice to?

14 A Our address in Hoboken, sir.

15 Q And how would Voyager have known that this was the
16 correct address?

17 A Well, as part of the addendum, you know, part of that
18 was assigning the rights to Celsius US from Celsius UK. So
19 I would say disclosure and execution of the addendum would
20 raise that kind of knowledge. Our address is listed on the
21 website.

22 Q Okay.

23 A Our Hoboken address.

24 Q You are referring to the assignment agreement. Is that
25 correct?

1 A Yes, sir.

2 Q Is there any address that's -- to your knowledge that's
3 -- do you have that assignment agreement in front of you, by
4 the way?

5 A I do not have it in front of me. I did read through
6 it, but it's not in front of me.

7 Q Okay. Is there an address anywhere in that agreement?

8 A Not that I remember offhand.

9 Q Okay. I'll represent to you and the Court that there
10 is no address in the assignment agreement.

11 MR. CHAPMAN: And I believe that the Debtor has
12 uploaded a revised declaration shortly before the hearing
13 that has the unredacted versions of those agreements, Your
14 Honor. So you should have those in full in front of you.

15 THE COURT: Let me just ask Celsius' counsel do
16 you agree that the assignment agreement doesn't have a
17 revised address in it?

18 MR. HURLEY: Your Honor, this is Mitch Hurley.
19 The assignment agreement references the terms of use, and
20 the terms of use include the address that was just
21 referenced by the witness. But the assignment agreement
22 does not expressly state that address within the text of the
23 assignment agreement.

24 THE COURT: Okay.

25 BY MR. CHAPMAN:

1 Q Mr. Ferraro, by referencing the terms of the use in the
2 assignment agreements --

3 MR. CHAPMAN: You know what, Your Honor? I'll
4 save this for argument later. I don't think it's
5 appropriate for the witness right now.

6 BY MR. CHAPMAN:

7 Q Mr. Ferraro, in Paragraph 9 of your declaration, you
8 say that to the best of your knowledge no Celsius agent or
9 employee ever received the notice of the bar date in
10 Voyager's bankruptcy. How did you make that determination?

11 A I checked in with the senior operations director who
12 handles kind of overseas mail and confirmed that there is no
13 record of any employee receiving such notice.

14 Q Okay. And did that individual speak with every
15 employee?

16 A That individual did not speak with every employee of
17 the company, no.

18 Q Do you know how many individuals that person spoke to?

19 A No, I didn't -- no, sir.

20 Q And do you know which individuals -- you know, who --
21 anyone that that person spoke to?

22 A Usually that person monitors the mailboxes. And there
23 is individuals that go and check the mail, and screen the
24 mail, and then kind of delegate the mail across the
25 organization. So this would've been caught in the normal

1 processes, sir.

2 Q Okay. Who is responsible for preparing the list of 90-
3 day transfers in the schedules that Celsius filed?

4 A In our statements and schedules, sir?

5 Q Yes. Who was responsible for preparing specifically
6 the 90-day transfers that were in the schedules and
7 statements?

8 A I can't speak -- yeah, sorry for talking over. I can't
9 speak specifically to who's responsible for that. It was a
10 collaboration between the internal team at Celsius and
11 Alvarez and Marsal led by Holden Bixler on that side with A
12 and M. This was --

13 Q Do you -- at --

14 A -- quite a big activity for us. We really had to
15 leverage across the entire organization starting really
16 before the petition and going all the way through when we
17 filed in October.

18 Q Oh, I imagine it was quite an undertaking. Did outside
19 counsel to Celsius have any involvement in preparing or
20 viewing the schedules?

21 A They were part of the review discussions.

22 Q And when you say they, what law firm are you referring
23 to?

24 A At -- it would've been Kirkland and Ellis.

25 Q Okay. So Kirkland was responsible for reviewing the

1 list of the 90-day transfers?

2 A I'm not sure, sir, the (indiscernible) responsibility.
3 We worked predominantly with A and M on the exercise. I
4 know that they were present in discussions.

5 Q Okay. But to the extent that outside counsel would've
6 been involved, it would've been Kirkland it sounds like. Is
7 that right?

8 A I don't want to speculate. They're involved in kind of
9 the (indiscernible) on all legal items in the case.
10 Obviously this one's a little bit different as we identified
11 and engaged with Akin. So...

12 Q Okay. And you're aware that the list of 90-day
13 transfers included all the Voyager withdrawals that are at
14 issue in this dispute? Is that right?

15 A Yeah. To my understanding, yes. When we filed the
16 statements and schedules, it was identified, yes.

17 Q Okay. So any of the professionals, whether Kirkland, A
18 and M, any of the professionals that would've been involved
19 in reviewing the schedules and statements would've been
20 aware that those transactions with Voyager were included on
21 the 90-day transfer schedule. Is that right?

22 MAN: Objection, foundation.

23 THE COURT: Overruled. Go ahead.

24 BY MR. CHAPMAN:

25 A I don't want to speculate on what they did or did not

1 know. I will say this. There's over 30,000 pages that we
2 produced and 3 million lines of data, and we have 600,000
3 Creditors.

4 Q Do you know what the purpose of the 90-day transfer
5 schedule is?

6 A My understanding is to look at withdrawals within 90
7 days and transfers within 90 days to look at preferential
8 claims, preferential transfers and claims.

9 Q So if you see a particular person on that 90-day
10 transfer schedule, what does that mean to you?

11 A I'm not the person -- I have many jobs in the company.
12 Looking at the 90-day transfers line by line is not one of
13 them, sir.

14 Q Oh, I'm asking more generically. If you were to see
15 somebody on the 90-day transfer schedule -- I think you
16 actually already answered it. You indicated previously that
17 it would -- the purpose of the 90-day transfer schedule is
18 to identify potential preference actions. Am I getting your
19 testimony correct on that?

20 A That's my understanding, sir.

21 Q Okay. So if you saw a particular person that 90-day
22 transfer schedule, wouldn't -- would that indicate to you
23 that there's a potential preference claim against that
24 person?

25 A I -- it would indicate to me that it should be

1 reviewed, yes.

2 Q Okay. Did someone at Celsius review the schedules and
3 statements, and in particular the 90-day transfer schedule
4 before it was filed?

5 A I can't speak to the review of individual statements.
6 As I mentioned, these are very voluminous. I don't think
7 that it would be reasonable to think that all 3 million
8 lines of data were reviewed and analyzed one by one. I
9 think there's processes and controls we have in place to
10 make sure that the statement schedules overall are
11 reasonable.

12 Q Okay. So even though they are signed under penalty of
13 perjury, you're saying that it's possible that no one had
14 reviewed the 90-day transfer schedule line by line.

15 A I don't think that --

16 MAN: Objection.

17 BY MR. CHAPMAN:

18 A -- we're assigning -- sorry. I don't believe that
19 individuals reviewed every line, every text of every single
20 statement and schedule. They were produced and reviewed as
21 I mentioned.

22 Q Okay. If Celsius wanted to further investigate the 90-
23 day transfers, would the company have been able to do that
24 before the Voyager bar date?

25 A Well, sir, we filed the statements and schedules on

1 October 5th. My understanding is the bar date was on
2 October 3rd.

3 Q Yes, but I -- when did you begin -- when did the
4 company AM begin preparing the schedules?

5 A As I mentioned, we started kind of mobilizing for the
6 effort shortly before the petition date knowing it was a big
7 lift.

8 Q Right. So is it fair to say that most if not all of
9 the work was completed before the bar date in this case?

10 A No, sir. We had a lot of transfers, including from
11 insiders, that were being reviewed and rereviewed and
12 checked along with other items of statements and schedules.
13 We asked for two extensions and received two extensions from
14 the court. We continued to work on populating really all
15 the way through kind of the timeline.

16 Q Okay. So again I'll ask if Celsius had wanted to
17 further investigate the 90-day transfers, would the company
18 have been able to do that before the Voyager bar date?

19 A We were still working on our statements and schedules,
20 sir, and reviewing those. So I think it would be hard to
21 identify this before we actually finalized the statements
22 and schedules. It's a little bit of a chicken-before-the-
23 egg problem.

24 Q Okay. So was anyone at either Celsius or any of
25 Celsius' professionals aware of the Voyager withdrawals from

1 Celsius before the bar date?

2 MAN: Objection, foundation.

3 THE COURT: Overruled.

4 BY MR. CHAPMAN:

5 A I don't know specifically, but to my understanding this
6 wasn't really identified until early November with regards
7 to the bar date and the claim.

8 Q Well, just to be clear, you're aware that the schedules
9 were filed on October 5th and the bar date in this case was
10 October 3rd. Are you saying that in that 48-hour period
11 that's when the Voyager transactions were discovered?

12 A No, I said in early November, sir.

13 Q But they were included in the schedules that were
14 filed, right?

15 A Yeah. I'm talking with relation to the bar date.

16 Q Okay. So I think what I'm hearing is that although
17 technically possible, it would've been difficult for Celsius
18 to have further investigated the Voyager withdrawals before
19 the Voyager bar date. Is that right?

20 A It's truly a needle in a haystack. You know, 3 million
21 rows of data, 600,000 creditors.

22 Q So -- oh, please continue.

23 A No, that's it.

24 Q So even if Celsius had received a bar date notice from
25 Voyager at what you believe is the correct address, we

1 would've been in the same position we are today. Celsius
2 still would not have been able to get a proof of claim on
3 file. Is that right?

4 A No, that would've connected the dots for us receiving
5 the notice in my opinion.

6 Q Were you aware of Voyager's bankruptcy filing prior to
7 the bar date?

8 A Yes, I was, sir.

9 Q When did you first become aware that Voyager had filed
10 for bankruptcy?

11 A Right around when we were filing. You know, I
12 remember, you know, hearing and reading about the case in
13 the run-up to our petition.

14 Q Have you ever been involved in a bankruptcy filing
15 before Celsius?

16 A No, sir.

17 Q And in your discussions with professionals, did you
18 come to learn that there are bar dates that are established
19 in bankruptcy cases?

20 A I have come to learn that, sir.

21 Q Okay.

22 MR. CHAPMAN: Your Honor, I have no more
23 questions.

24 THE COURT: All right. Anybody else wish -- does
25 anyone else wish to cross-examine?

1 MR. WHALEN: Nothing from Voyager, Your Honor.

2 THE COURT: I'm sorry. You do or you don't, Mr.

3 --

4 MR. WHALEN: Nothing from Voyager, Your Honor.

5 Thank you. We do not.

6 THE COURT: I have some follow-up questions for
7 the witness of my own. Mr. Ferraro, in response to the
8 questions about whether Celsius could have identified the
9 Voyager information before October 3rd, you on several
10 occasions talked about how long it took to do the overall
11 schedules, but you didn't actually have to do the overall
12 schedules just to get the Voyager information, did you?

13 THE WITNESS: No, we didn't. But we were not on
14 the lookout for anything that was specific of Voyager, Your
15 Honor.

16 THE COURT: But in terms of identifying just the
17 Voyager information, I presume that meant only looking at
18 the Voyager accounts. It probably took no more than five
19 minutes, did it?

20 THE WITNESS: Right, but we would've needed to
21 know to look at the Voyager account specifically in relation
22 to the bar date. And that's what we didn't connect.

23 THE COURT: In the Celsius case when Kirkland and
24 Ellis moved -- or excuse me, when Celsius moved for
25 permission to retain Kirkland and Ellis, there was an

1 objection by a customer that was filed on July 28th that
2 alleged that there was a conflict because Kirkland and Ellis
3 also represented Voyager, and that Voyager had had dealings
4 with Celsius and was a customer of Celsius. Were you aware
5 of that objection?

6 THE WITNESS: I had just been the CFO of the
7 company. I'm aware broadly of the conflict or the
8 perception of a conflict. I did not read the objection,
9 Your Honor.

10 THE COURT: All right. I presume somebody at
11 Celsius had to make the decision as to whether that did or
12 did not constitute a conflict on behalf of Kirkland and
13 Ellis. Who made that decision?

14 THE WITNESS: I wasn't party to that discussion,
15 Your Honor. I do not know.

16 THE COURT: You don't know who made that decision.

17 THE WITNESS: No, sir.

18 THE COURT: So you don't also know what
19 information that person or persons might have had about
20 Voyager's dealings with Celsius.

21 THE WITNESS: No, sir. I was not in this role at
22 that time. I do not have that information.

23 THE COURT: Kirkland and Ellis filed a declaration
24 at the end of August in response to this objection that said
25 that Voyager had been a customer of Celsius, and that

1 Voyager had withdrawn most of what had been in its accounts.
2 Do you have any knowledge of where Kirkland got that
3 information?

4 THE WITNESS: I do not, sir. Kirkland and Alvarez
5 had access to voluminous amounts of data obviously in the
6 case. I think it's important to note that, you know, we did
7 not connect the dots, but our advisors did not connect the
8 dots either, Your Honor.

9 THE COURT: Well, do you know who at Celsius, if
10 anybody, provided that information to Kirkland?

11 THE WITNESS: I do not know on that specific
12 declaration. I do not know who provided that information,
13 Your Honor.

14 THE COURT: Well, if you don't even know who
15 provided the information or who made the decision about
16 whether this constituted a conflict, how do you know whether
17 or anybody at Celsius connected the dots?

18 THE WITNESS: Well, because it wasn't until early
19 November when this was kind of brought up to my attention as
20 well as to the special committee's attention. So I'm basing
21 my understanding on that, Your Honor.

22 THE COURT: Who brought it to your attention?

23 THE WITNESS: I can't remember specifically. I
24 remember having a conversation with -- I think it was our
25 general counsel who brought it to my attention. I might've

1 been also listening in on meetings with the special
2 committee. I can't remember. It was likely one of those
3 two.

4 THE COURT: It was either the general counsel or
5 who?

6 THE WITNESS: Or me listening into the special
7 committee meetings of the board. And this would've been
8 likely discussed there. I can't remember where I first
9 heard this.

10 THE COURT: Okay. How did they say that the issue
11 had come to their attention?

12 THE WITNESS: Your Honor, I do not have that
13 information. I do not recall.

14 THE COURT: You don't actually know when -- if
15 somebody asked you to look at it or brought it up to you,
16 you don't actually know when that person learned of the
17 issue or how that person learned of the issue. Is that
18 correct?

19 THE WITNESS: No. I only remember that it was,
20 you know, early November.

21 THE COURT: Okay. That's when they mentioned it
22 to you, but when they actually learned of the issue, you
23 have no idea. Is that correct?

24 THE WITNESS: Yeah, I don't know, Your Honor.

25 THE COURT: All right. Celsius filed papers on

1 September 16th in its case asking for an additional
2 extension of time to file its schedules, but indicated in
3 that motion that it had compiled the schedules. It just
4 couldn't put them in final form until Judge Glenn had ruled
5 on the issue of what information would be disclosed. Was
6 that your understanding at the time, that the schedules had
7 --

8 THE WITNESS: Yes.

9 THE COURT: -- otherwise been compiled by
10 September 16th?

11 THE WITNESS: Compiled but not finalized, Your
12 Honor. We were still working on items, you know, especially
13 reviewing insider transactions.

14 THE COURT: So the final formatting was done, and
15 documents were filed on the 5th, but the information was
16 compiled sometime before that, right?

17 THE WITNESS: We started pulling the information,
18 yeah, a month before the filing date on October 5th.

19 THE COURT: When Celsius filed and the Voyager
20 case had filed, was somebody -- was anybody -- to your
21 knowledge, was anybody at Celsius tasked with monitoring the
22 Voyager docket or developments that might also be relevant
23 to Celsius?

24 THE WITNESS: No one that I know of, Your Honor.

25 THE COURT: Do you know if the general counsel of

1 Celsius did so?

2 THE WITNESS: Not that I know of, Your Honor.

3 THE COURT: Who is the general counsel of Celsius?

4 THE WITNESS: Ron Deutsch.

5 THE COURT: And how big a staff is there in the
6 general counsel's office?

7 THE WITNESS: I think there's around five in-house
8 lawyers on the team.

9 THE COURT: Okay. Have you yourself asked the
10 general counsel if the general counsel knew of these issues
11 prior to the Voyager bar date?

12 THE WITNESS: In my conversations leading up to my
13 declaration as well as preparing for today, I did talk with
14 the general counsel. And I also heard that he kind of
15 became aware of this in early November. I don't know
16 specifically the date or how he was made aware.

17 THE COURT: Okay. And your counsel has said that
18 -- has cited to your declaration and others, which say that
19 you didn't receive the -- or you don't have record of
20 receiving the bar date notice. I didn't actually see any
21 statement in your declaration that you personally were
22 actually unaware of the Voyager bar date. Were you unaware
23 of it?

24 THE WITNESS: Yeah, I was unaware of the Voyager
25 bar date.

1 THE COURT: And you testified about what you did
2 to check with the mail departments about whether the
3 remembered the bar date notice having been received. What
4 did you do by way of canvassing people within Celsius, if
5 you did anything, to determine whether people inside Celsius
6 knew of the bar date?

7 THE WITNESS: In talking with the general counsel
8 and in talking with the operations lead as I discussed
9 before. I can't remember specifically who else I canvassed
10 to understand, but if the operations lead didn't have record
11 of the mail, that's kind of where it starts and stops, Your
12 Honor. We were obviously busy compiling our statements and
13 schedules. We've had a lot of reduction in staffing.
14 People are doing multiple jobs, so I don't think that there
15 was internal knowledge in following of the Voyager case.

16 THE COURT: As to the mail department records,
17 does the mail -- do the people there actually keep logs of
18 mail that's coming in?

19 THE WITNESS: I don't know of any formal logs that
20 are kept, Your Honor.

21 THE COURT: Do you know what the volume of mail
22 that comes in on a given day is?

23 THE WITNESS: No, I do not.

24 THE COURT: Do you have any rough sense of it? Is
25 it more than 1,000 items?

1 THE WITNESS: No, Your Honor, I do not.

2 THE COURT: So it could be more than 1,000 items?

3 THE WITNESS: It could be one, it could be 1,000.

4 I do not know.

5 THE COURT: It could be 10,000 so far as you
6 know?'

7 THE WITNESS: I wouldn't want to venture to guess,
8 Your Honor. I could look into this, but I do not know.

9 THE COURT: So when you talked to the people in
10 the -- who oversee the mail, essentially what you're asking
11 them is whether they remembered seeing something from --
12 seeing an envelope from Voyager out of however many thousand
13 pieces of mail Celsius receives. Is that what it comes down
14 to?

15 THE WITNESS: I don't know how they track the
16 mail, Your Honor, so I was just asking whether or not they
17 knew of any bar date received.

18 THE COURT: Okay. And when Celsius changed its
19 address in March, did it send a change of address notice to
20 Voyager?

21 THE WITNESS: I do not know that -- the answer to
22 that, Your Honor.

23 THE COURT: The assignment agreement, the initial
24 contract before the assignment agreement, the initial
25 contract with Voyager had a notice address in it, didn't it?

1 THE WITNESS: It did, Your Honor, yeah. 35 Gray
2 Street.

3 THE COURT: Did the assignment agreement amend
4 that notice address?

5 THE WITNESS: To my knowledge it did not
6 explicitly state the notice address. It referred to terms
7 and service which had the address for the U.S. entity is my
8 understanding, Your Honor.

9 THE COURT: Okay. When Celsius changed its
10 address in the UK, did it do something in the UK that's the
11 equivalent of what we would do here by way of giving the
12 post office a forwarding address?

13 THE WITNESS: Absolutely, Your Honor. There's a
14 thing called in the UK the company's house, which is a
15 public record about companies', including Celsius, address.
16 It is there for the enjoyment of anybody who wants to go and
17 look it up.

18 THE COURT: Well, my -- I'm not sure that answered
19 my question. My question was more with the postal
20 authorities, whether they're given notice of your new
21 address so that if any mail comes in at the old address they
22 will forward it to the new address.

23 THE WITNESS: We have mail forwarding at the 1
24 Bartholomew address. I do not know of any mail forwarding
25 at the 35 Gray Street address.

1 THE COURT: And why wouldn't Celsius have put in a
2 mail forwarding address at the -- from the old address to
3 make sure that it continued to receive any mail that might
4 be sent there?

5 THE WITNESS: I don't know, Your Honor. That was
6 over two years ago. I don't have an answer to that.

7 THE COURT: Okay. Do you know one way or the
8 other whether there was a forwarding address given to the
9 postal authorities?

10 THE WITNESS: I do not, Your Honor.

11 THE COURT: Okay. All right. Is there any other
12 questions that anybody wishes to ask of Mr. Ferraro?

13 MR. CHAPMAN: Your Honor, this is Dean Chapman.
14 Can I ask just a quick redirect question of the witness?

15 THE COURT: Yep. Yes.

16 BY MR. CHAPMAN:

17 Q And again, good morning, Mr. Ferraro. Dean Chapman,
18 Akin Gump Strauss Hauer and Feld. On this question of mail
19 forwarding, can you just explain to the Court the different
20 addresses associated with Celsius in the UK?

21 A Yeah. The address and the dates?

22 Q Sure.

23 A Okay. On February 9, 2018, we incorporated the entity,
24 and the registered address was 35 Gray Street in London. On
25 March 20, 2020, we filed a change of registered address for

1 1 Bartholomew Lane, London. On May 11, 2021, we changed --
2 filed a change of register. Again on May 11, 2021, we filed
3 a change of the registered address to 77-79 New Cavendish
4 Street, London, which is our current address.

5 Q Got it. So the address to which Voyager prefers to
6 have sent notice was the address that Celsius occupied in
7 London two addresses ago. Is that correct?

8 A That's correct.

9 Q Okay. One other question, Mr. Ferraro. You testified
10 that you didn't become aware of the potential claim against
11 Voyager until early November of 2022. Is that right?

12 A Yes. That's what I recall.

13 Q And can you explain to the Court what steps you took
14 upon becoming aware of the potential claim?

15 A Well, we engaged Akin Gump to handle this matter.

16 Q Anything else?

17 A Nothing else off of memory. I remember having that
18 conversation and talking about the conflict that Kirkland
19 has and talking with the GC Ron Deutsch about effectively
20 engaging with Akin Gump to handle this matter.

21 Q Do you remember how much time passed between becoming
22 aware of the potential claim (indiscernible) of Akin Gump?

23 A I recall a very little amount of time. I don't know
24 exactly how much. I think this all happened pretty quick in
25 early to mid-November.

1 Q Okay. Nothing further. Thank you.

2 THE COURT: Okay. Thank you, Mr. Ferraro. You
3 are excused. Do you have another witness, Mr. Hurley?

4 MR. HURLEY: I do, Your Honor. Thank you. Again,
5 Mitch Hurley with Akin Gump for the record. The Celsius'
6 next witness is Holden Bixler, the managing director at
7 Alvarez and Marsal. And I believe Mr. Bixler is on the line
8 and available for cross-examination, and we would therefore
9 offer his declaration into evidence.

10 THE COURT: Any objections to the admission of Mr.
11 Bixler's declaration into evidence? All right. It's
12 admitted into evidence. I understand that the Committee
13 wishes to cross-examine?

14 MR. AZMAN: Yes, Your Honor. It's Darren Azman
15 again from McDermott for the Committee. Did you need to
16 swear Mr. Bixler? Maybe I missed it. Sorry.

17 THE COURT: Hang on one second. Just making a
18 note to myself. Thank you. I'm so absorbed. How could I
19 have forgotten that.

20 Mr. Bixler, do you swear that the testimony you
21 are about to give will be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 MR. BIXLER: I do.

24 CROSS-EXAMINATION OF HOLDEN BIXLER

25 BY MR. AZMAN:

1 Q Good almost afternoon, Mr. Bixler. In Paragraph 13 of
2 your declaration, you see that four weeks -- and I'm just
3 quoting here, four weeks after the filing of the schedules
4 and statements, A and M was asked about Voyager's
5 withdrawals of crypto assets in the 90 days prior to the
6 filing of Celsius' Chapter 11 bankruptcy petition. I want
7 to focus on the three words that I emphasized, "A and M was
8 asked." Who specifically asked A and M about this?

9 A Kirkland and Ellis sent an email to us on November 2nd
10 I believe asking for a summary of the various places in
11 which Voyager appeared in the statements and schedules.

12 Q When was the first time that anyone at A and M
13 discussed Voyager's withdrawals either internally among A
14 and M personnel or externally with anyone else?

15 A It would've been --

16 MR. HURLEY: Objection.

17 THE COURT: I'm sorry. What was the objection?

18 MR. HURLEY: Foundation.

19 THE COURT: Overruled.

20 BY MR. AZMAN:

21 A It would've been right around that time, around
22 November 2nd.

23 Q So no one ever at Celsius that you're aware of or at A
24 and M ever discussed Voyager's withdrawals before November.

25 A Not that I'm aware of.

1 Q Okay. But you're aware of the supplemental declaration
2 from Kirkland and Ellis that references the Voyager
3 withdrawals, right?

4 A I am not.

5 Q Okay. Was A and M generally aware of the Voyager
6 bankruptcy filing at any time prior to the Voyager bar date?

7 A Yeah, we were. We were aware of the Voyager filing
8 coming into our engagement in the case.

9 Q Okay. It sounds like it took quite a lot of time for
10 your team to put together the schedules from Celsius. Is
11 that right?

12 A That is absolutely correct, yeah.

13 Q When exactly did you start preparing the schedules?

14 A So some of our initial data requests would've gone out
15 pre-petition. So you know, maybe early July.

16 Q And are you familiar with the 90-day transfer section
17 the schedules?

18 A Yes, I am.

19 Q And that identifies a number of withdrawals that were
20 made by Voyager during the 90-day pre-petition period. Is
21 that right?

22 A Correct.

23 Q Can you help me understand how exactly your team
24 compiled the list of 90-day transfers?

25 A I'll do my best. So Celsius maintains an internal log

1 of transfers, and we requested the data that would be
2 responsive to that question in the Statement of Financial
3 Affairs, SOFA 3, from the company. They provided us
4 initially with files containing approximately 25 and a half
5 million rows of transaction data within that period. And
6 then A and M kind of cleaned and formatted and aggregated
7 that information into what was ultimately reported in the
8 SOFA through a sort of iterative process. We got multiple
9 pools of the information, and then you know, ultimately
10 filed what's on the docket today.

11 Q Okay. How many different people at Celsius and A and M
12 would you say were involved in preparing the Celsius
13 schedules? Just roughly.

14 A It was a substantial team. On the A and M side, we
15 probably had four or five folks involved in the statements
16 and schedules workstream. On the company's side, it
17 would've exceeded 10 or 15 in some capacity. Not all
18 directly related to the 90-day payments, but that's the, you
19 know, kind of broad statement schedule workstream team.

20 Q And you're aware that the Voyager bar date was October
21 3rd, right?

22 A Yes.

23 Q So several months before the bar date in this case,
24 your team prepared a schedule that identified the
25 withdrawals by Voyager that are issue in this dispute. Is

1 that right?

2 A I don't know. I can tell you that we got our initial
3 provision of this transaction history data on August 31st,
4 and then we subsequently received additional iterations of
5 this data all the way up through October 4th just before we
6 filed the statements and schedules.

7 Q Okay. When would you think that the Voyager
8 withdrawals first showed up in some form on the schedules
9 that were being prepared?

10 A I don't know. We had parties coming on and off of
11 those data sets through that. One of the reasons for the
12 iteration is, you know, sort of an ongoing cleaning and QC
13 process. So we -- the data sets were in flux throughout
14 that process. And I wouldn't know specifically with respect
15 to Voyager.

16 Q Okay. So you knew about the Voyager bankruptcy filing,
17 and -- strike that. Would you agree that at least weeks
18 before the bar date the Voyager withdrawals were in some
19 form included in the draft schedules that were being
20 prepared?

21 A Again, I don't know. It wasn't something that I looked
22 for specifically then, so I don't know at what point those
23 appeared in our data set.

24 Q Okay.

25 A They may have been in the very first data set, but I

1 just don't know the answer to that.

2 Q Okay. And so notwithstanding that these withdrawals
3 appeared at some point in the schedules that you were
4 preparing before the bar date in this case, and
5 notwithstanding that the A and M and Celsius teams were
6 aware of the Voyager bankruptcy filing, did anyone
7 prioritize looking at whether there might be preference
8 claims against Voyager?

9 A Not on the A and M team.

10 Q Why not?

11 A Well, at the time we -- our mandate was to prepare the
12 statements and schedules, which was sort an all-consuming
13 process. And we were solely focused on aggregating,
14 cleaning, and processing the data that the company was
15 providing in order to, you know, report as accurately as
16 possible. We didn't engage any analysis of the data at that
17 time. Leading up to the deadline for filing the statements
18 and schedules, the focus was solely on ensuring that we
19 prepared those in the most accurate form possible. Analysis
20 would typically follow.

21 Q In Paragraph 12 of your declaration, you say that other
22 than in GKA preference actions, Celsius had not undertaken
23 any generalized effort to identify potential preference
24 actions. Is that right?

25 A That's right.

1 Q What do you mean by generalized effort?

2 A I mean that at that point there'd been no workstream
3 stood up to conduct a preference analysis and evaluate, you
4 know, potential claims that may be -- potential preference
5 claims that may be contained within that 90-day payment
6 file.

7 Q Okay. If Celsius wanted to further investigate the 90-
8 day transfers, would A and M or Celsius have been able to do
9 that before the Voyager bar date?

10 A So I can tell you that the teams that were tasked with
11 preparing the statements and schedules during that time did
12 not have additional bandwidth. We were pretty maxed out
13 across the boards. So I don't really know what would've
14 happened had that request come across.

15 Q Okay. So even if Celsius had received a bar date
16 notice from Voyager at the correct address and A and M had
17 been asked to do this, it sounds like you guys wouldn't have
18 had the bandwidth to do it. Is that right?

19 A Again, I don't know. Maybe we could've brought
20 additional people on to address that issue. It's hard for
21 me to say what could've happened at that time.

22 Q Okay.

23 MR. AZMAN: Your Honor, I have no additional
24 questions.

25 THE COURT: Does anyone else wish to cross-examine

1 Mr. Bixler? I have some questions. Mr. Bixler, you said
2 that Kirkland and Ellis asked you to look at the Voyager
3 issues in November. Is that correct?

4 THE WITNESS: They sent an email on November 2nd
5 asking for detail on the places in which Voyager appeared in
6 Celsius' Statement of Financial Affairs and schedules of
7 assets and liabilities.

8 THE COURT: And who from Kirkland made that
9 request?

10 THE WITNESS: I don't recall offhand, though I
11 could check my email now if you'd like me to.

12 THE COURT: But you don't recall as you sit here
13 right now?

14 THE WITNESS: I don't, no.

15 THE COURT: All right. And to whom was the
16 request made? Just you or a broader group?

17 THE WITNESS: It would've come to the team, but
18 probably me. You know, me with a CC to my team.

19 THE COURT: Did Kirkland explain what had prompted
20 the request?

21 THE WITNESS: No. As I recall, it would've been a
22 very simple -- it was a very simple sort of one-liner email
23 saying can you please send a summary of, you know, the
24 places in which Voyager appears in statements and schedules.

25 THE COURT: What was it about that that alerted

1 you to the possibility that Celsius might have a preference
2 claim?

3 THE WITNESS: I don't know that that necessarily
4 did alert me to that fact. I think that when I saw the
5 summary, I did see that Voyager appeared in the section
6 where we were detailing the SOFA 3 information, the negative
7 payment information. So that probably would've signaled to
8 me, ah, there might be a preference claim here.

9 THE COURT: So knowing that voyager had received
10 withdrawals was enough to signal to you that there was a
11 possible preference claim?

12 THE WITNESS: A possible preference claim, yes,
13 though, you know, I haven't done a preference action in a
14 crypto case and don't have a full understanding of, you
15 know, what the kind of rules of the road are for those
16 withdrawals. But certainly potential seeing their -- that
17 summary of those payments in that -- you know, in that
18 document we provided to Kirkland would've signaled to me
19 that there was a potential preference claim.

20 THE COURT: When did you first learn that Voyager
21 had had accounts at Celsius?

22 THE WITNESS: I don't recall when I first -- I
23 certainly became aware in response to the email in November
24 when we sent the summary to Kirkland. I don't recall prior
25 to that when I became aware.

1 THE COURT: But do you know whether you had been
2 aware before that time that Voyager had accounts at Celsius?

3 THE WITNESS: I suspect I was aware before that
4 time Voyager had accounts at Celsius.

5 THE COURT: And why do you suspect that you knew
6 that?

7 THE WITNESS: I think I knew that there were
8 conflicts issues with Voyager and Celsius. And so that
9 probably signaled to me that there was a connection there,
10 but I don't really have a very specific recollection of
11 that.

12 THE COURT: How did you know that there were
13 conflicts issues?

14 THE WITNESS: I don't recall.

15 THE COURT: Do you recall when you knew that there
16 were conflicts issues?

17 THE WITNESS: No, I don't, Your Honor.

18 THE COURT: Do you know who was involved in
19 assessing those conflicts issues from the perspective of
20 Celsius?

21 THE WITNESS: No, I don't, Your Honor.

22 THE COURT: Do you have any knowledge as to what
23 information or issues were addressed by anybody on behalf of
24 Celsius in deciding whether there were conflicts issues that
25 -- and how they needed to be addressed?

1 THE WITNESS: No, I don't, Your Honor.

2 THE COURT: I had asked Mr. Ferraro, I assume you
3 were on the line, about the objection that was filed in July
4 and about the K and E declaration that was filed in August.
5 Do you have any knowledge of where Kirkland and Ellis got
6 the information that was disclosed in that objection
7 regarding the fact that Voyager had accounts at Celsius and
8 that Voyager had made withdrawals from those accounts?

9 THE WITNESS: Yeah, I heard your transaction with
10 Mr. Ferraro. I do not know where Kirkland got that detail,
11 Your Honor.

12 THE COURT: Were you aware of that declaration?

13 THE WITNESS: No, I was not.

14 THE COURT: And when you say you knew that there
15 were conflicts issues, do you know if that was at the time
16 of this declaration, or if it was later, or if it was
17 earlier? Do you know one way or the other?

18 THE WITNESS: No, I don't recall. I was sort of
19 vaguely aware of conflicts issues, you know, at some point
20 in the matter, but it wasn't something that was directly
21 related to any workstream I was on.

22 THE COURT: All right. You said Kirkland and
23 Ellis raised the issue in November about Voyager's accounts.
24 Did you think it was their responsibility to alert people at
25 Celsius if there was a potential preference claim?

1 THE WITNESS: I think that counsel would typically
2 take the lead on pursuing that sort of claim.

3 THE COURT: Okay. And is there any question in
4 your mind but that Kirkland and Ellis knew at the end of
5 August that Voyager had made withdrawals and that in the
6 Voyager case there was a bar date?

7 THE WITNESS: At the end of August?

8 THE COURT: Yeah.

9 THE WITNESS: I don't know. I don't know when
10 Kirkland and Ellis would've become aware of that
11 information.

12 THE COURT: Well, they're the same counsel for
13 Voyager and Celsius, so they knew about the Voyager bar
14 date, right?

15 THE WITNESS: I would assume so. As counsel for
16 those Debtors, I would assume they're aware of the bar date.

17 THE COURT: Okay. Have you spoken to anybody at
18 Celsius about communications they had with Kirkland and
19 Ellis about the Voyager accounts?

20 THE WITNESS: I have not.

21 THE COURT: So you don't know what information
22 other people at Celsius may have had from talking to
23 Kirkland and Ellis about potential claims against Voyager.

24 THE WITNESS: No, I don't.

25 THE COURT: Okay. All right. Thank you. That's

1 all I have.

2 MR. CHAPMAN: Briefly on redirect. Dean Chapman,
3 Akin Gump Strauss Hauer and Feld.

4 REDIRECT EXAMINATION OF HOLDEN BIXLER

5 BY MR. CHAPMAN:

6 Q Mr. Bixler, how many rows of data were in the
7 spreadsheet evidencing transfers in the 90 days prior to
8 Celsius' petition?

9 A So the filed 90-day payment schedule contained about 3
10 million rows. The source information for that, you know,
11 prior to aggregation was in excess of 25 million rows.

12 Q Got it. And of the 3 million rows that were included,
13 how many of those rows approximately involved transfers to
14 Voyager?

15 A I don't know offhand, but I can say it's, you know,
16 comfortably under 50 rows.

17 Q Under 50 rows out of approximately 3 million total?

18 A Yeah. I think that's right.

19 Q And how many different customers, individual customers,
20 would've been reflected in those 3 million rows?

21 A I don't know offhand.

22 Q Would the number be greater than 100,000?

23 A I don't know offhand. You know, the company has
24 600,000 customers, and I suspect many or most of them were
25 transacting in that window.

1 Q Okay. You were also asked at one point that you were
2 aware of the October 3rd bar date, correct?

3 A Yes.

4 Q And when did you become aware of that bar date?

5 A I don't know specifically. I think I became aware of
6 it certainly by, you know, early November when this issue
7 was raised. I don't know that I was aware of it in advance
8 of that.

9 Q Okay. Nothing further. Thank you.

10 THE COURT: Okay. Anything else?

11 MR. HURLEY: So Your Honor, the final declaration
12 that Celsius submitted in support of the motion is from me,
13 and we would offer that into evidence as well.

14 THE COURT: And I'll excuse Mr. Bixler and thank
15 him for his testimony. You're offering your declaration,
16 Mr. Hurley?

17 MR. HURLEY: Yes, Your Honor.

18 THE COURT: Is there any objection to the
19 admission of Mr. Hurley's declaration? Does anybody wish to
20 cross-examine?

21 MR. AZMAN: Yes, Your Honor. Darren Azman for the
22 Committee.

23 THE COURT: Okay. Please proceed.

24 MR. AZMAN: Your Honor, I'm mindful that Mr.
25 Hurley is counsel for Celsius, so I'm going to keep this

1 short and try to keep this narrow.

2 CROSS-EXAMINATION OF MITCH HURLEY

3 BY MR. AZMAN:

4 Q Mr. Hurley, in Paragraph 4 of your declaration, you
5 state that Akin was retained as conflicts counsel. Is that
6 right?

7 A That's correct.

8 Q When is the first time that someone at Celsius or
9 Kirkland mentioned anything to Akin about potentially
10 handling issues related to Voyager?

11 A I believe it was November 5th. It certainly was early
12 November.

13 Q Hmm. In Paragraph 4 of your declaration, you also say
14 that Akin investigated the Voyager transactions and
15 considered Celsius' potential claims. Is that right?

16 A Correct.

17 Q And you're aware that the 90-day transfer schedule that
18 was prepared well in advance of the Voyager bar date listed
19 these very transactions that are at issue, right?

20 A You're asking me if I'm aware of that now?

21 Q Yes.

22 A Certainly.

23 Q Okay. What additional investigation did you determine
24 -- strike that. What additional investigation did you do to
25 determine that Celsius had potential preference claims

1 against Voyager?

2 A I mean, I'm going to approach this very generally
3 mindful as you pointed out that I want to be careful around
4 attorney-client privilege. We coordinated with A and M with
5 respect to identifying timing of transfers and considered
6 what kinds of legal arguments would exist with respect to
7 potential claims, including based on the information that we
8 received about the timing of transfers.

9 Q Is the very existence of the 90-day transfers
10 sufficient to know that there is a potential preference
11 claim against someone who received transfers during that
12 period of time?

13 A Well, as the objectors point out in their papers,
14 there's a legal issue that has to be confronted as well, and
15 that had not been determined at that time by Judge Glenn.
16 So I don't think it is as simple as that, but certainly the
17 timing of the transfers is an important component.

18 Q And in your experience as a bankruptcy practitioner,
19 have you ever filed a -- what is referred to as a
20 placeholder proof of claim where you're not sure whether
21 your client in fact has a claim but they might and you want
22 to preserve their rights? Are you familiar with that
23 concept?

24 A So I confess that I'm not. I am primarily a litigator.
25 Though I appear pretty regularly in bankruptcy court, I have

1 not been involved in a process of the kind you just
2 described.

3 Q All right. Well, you had me fooled.

4 MR. AZMAN: Your Honor, that's all the questions I
5 have for Mr. Hurley.

6 THE COURT: All right there any other parties that
7 wish to question Mr. Hurley? Mr. Hurley, when did Akin Gump
8 first become conflicts counsel in general to Celsius?

9 MR. HURLEY: So -- and this is actually something
10 I was going to address in my argument. Akin Gump is acting
11 as conflicts counsel currently with respect to two matters.
12 One is the Voyager matter, and another is a matter related
13 to a company called Rhodium. And there was a retention
14 application that was filed that relates to both of those
15 matters.

16 And as one of the objecting parties correctly
17 points out, that retention application was effective as of
18 October 14, 2022, but that's because it related to both
19 Rhodium and Voyager. Akin Gump's work as conflict counsel
20 with respect to Rhodium did in fact begin in October, but
21 Akin Gump did not bill any time or -- and was not involved
22 as conflicts counsel with respect to Rhodium after November
23 5th.

24 THE COURT: Were you doing any work for Celsius in
25 August of 2022?

1 MR. HURLEY: Yes, but not related to Voyager.

2 THE COURT: All right, but you were conflicts
3 counsel of some kind in August of 2022?

4 MR. HURLEY: Your Honor, we were retained
5 originally as special litigation counsel because Akin Gump
6 had been representing Celsius in some litigation matters
7 pre-petition. So we were specifically retained to handle
8 those two litigation matters. We were then later asked to
9 take on the conflict role when first the Rhodium matter
10 arose and then the Voyager matter arose. But in August, we
11 were not retained as conflicts counsel per se.

12 THE COURT: Okay. So when Kirkland and Ellis
13 filed a supplemental declaration saying that it would not be
14 involved in any issues between Celsius and Voyager that was
15 filed in August of 2022, had anybody approached you at that
16 point to ask you to be involved in issues between Celsius
17 and Voyager?

18 MR. HURLEY: Not at that point, Your Honor.

19 THE COURT: It wasn't until November that somebody
20 did so?

21 MR. HURLEY: It was not until November that we
22 were asked to handle the Voyager matters, correct.

23 THE COURT: Okay. I have nothing further.

24 MR. HURLEY: Okay. So Your Honor, I guess that
25 brings us to the argument unless there's any other business

1 you want to take care of first or questions you have before
2 we move onto that.

3 THE COURT: Is there any other evidence that any
4 of the parties wish to introduce?

5 MR. AZMAN: Your Honor, I thought that the Debtors
6 would move into evidence the omnibus wallet agreement and
7 the assignment agreement. I don't believe they've been
8 entered yet, have they?

9 THE COURT: No.

10 MR. AZMAN: I guess I will move to admit them into
11 evidence.

12 THE COURT: Any objections?

13 MR. HURLEY: No objection from Celsius, Your
14 Honor.

15 MAN: No objection from the Debtors, and we agree
16 with moving them in evidence.

17 THE COURT: All right. They're admitted into
18 evidence. I don't have an explanation anywhere as to why
19 notice was sent to Celsius UK as late as it was on September
20 23rd. What's the reason for that?

21 MR. WHALEN: Your Honor, Michael Whalen from Paul
22 Hastings. Celsius was identified by Voyager on an amended
23 Schedule G, which is the disclosure of executory contract.
24 So we were identifying the wallet agreement with Celsius as
25 a potential asset of the estate. They were not identified

1 as a Creditor, and we still took the step of sending notice
2 of the bar date to Celsius. We did not believe then,
3 frankly we don't believe now that they're properly a
4 creditor, though that is an issue for later.

5 So you know, it accords with our view as Debtors
6 and as Debtor counsel as we do in most cases that more
7 notice is better. But our view here, you know, we think the
8 issue of actual notice is secondary because, particularly in
9 light of the testimony we just received, it seems abundantly
10 clear to the Debtors that Celsius, with respect to this
11 preference claim, was an unknown Creditor, and thus did not
12 need and was not entitled to actual notice.

13 THE COURT: We'll get to argument in a second. My
14 question was why notice wasn't sent until September 23rd.

15 MR. WHALEN: Yes, Your Honor. And that was just a
16 function of when we identified those contracts and we
17 amended the schedules shortly before that, I believe
18 September 15th, and then we got notice packets together as
19 promptly as possible and sent them out thereafter after
20 identifying those contract counterparties so that we could
21 get notice to them.

22 THE COURT: And do I know one way or the other
23 whether the notice was returned as undeliverable?

24 MR. WHALEN: No, Your Honor. We can identify
25 that. I don't believe -- well, I won't say anymore, but we

1 can identify that.

2 THE COURT: Well, we've got the evidentiary record
3 today, so we don't know is basically what the answer is.

4 MR. WHALEN: Yes, Your Honor.

5 THE COURT: Anything else for the evidentiary
6 record? All right. We'll close the evidentiary record
7 then. We'll have argument, but first we'll take a five-
8 minute recess, okay?

9 MR. WHALEN: Yes, Your Honor.

10 (Recess)

11 THE COURT: All right. I have returned. I
12 thought I put my phone on mute, but somehow my entire
13 connection was divert, but I'm back. Are the parties ready
14 to proceed?

15 MR. HURLEY: Yes, Your Honor.

16 THE COURT: All right. Mr. Hurley, I have to tell
17 you that much of your argument is that it would've been
18 unreasonable for Voyager to -- or excuse me, for Celsius to
19 have stumbled upon this claim on its own by the process of
20 preparing its schedules because there was such voluminous
21 information, and it's just not reasonable to say that
22 anybody could've filtered out and found this particular
23 claim just based on the preparation of the schedules.

24 But that all assumes, I think, that Celsius --
25 that nobody at Celsius knew or should've known about the

1 Voyager bar date. Because isn't it the whole point of a bar
2 date that you're supposed to separately figure out whether
3 you have a claim against that particular Debtor? You know,
4 we don't ordinarily, for example, let people come in and get
5 relief from the bar date just by saying that, well, that's
6 not information I would've ordinarily come across in the
7 ordinary course of my business, or I didn't look at it
8 because the statute of limitations wasn't imminent, or
9 things like that.

10 The whole point is if you know or should've known
11 about the bar date, you're supposed to accelerate your quest
12 to find out if you have a claim against the particular
13 Debtor. Isn't that right?

14 MR. HURLEY: If you know or should've known about
15 the bar date? I think that certainly makes sense to me,
16 Your Honor. You know, obviously here Celsius has said, you
17 know, uniformly that it was not aware of the bar date until
18 after the bar date passed.

19 THE COURT: Well, that's not -- you know, you keep
20 saying that, but your declarations fall far short of that
21 mark. You have one witness who says he didn't know. That's
22 Mr. Ferraro. You have another witness who says that, well,
23 he knew about it in November. He might've known about it
24 before then. He's not sure. And you don't have any
25 testimony as to whether anybody else knew about it. You

1 keep saying that you have testimony that nobody knew, but
2 all your real testimony is, is that one of those guys didn't
3 know and that the mailroom didn't remember seeing the
4 notice.

5 MR. HURLEY: It'd be fair that there are limits to
6 our ability to prove the negative, but certainly based on
7 the inquiries that we made and that the remaining Celsius
8 personnel made, the answer that we've gotten back is that no
9 one was aware of the bar date. I certainly --

10 THE COURT: I have no evidence that any such
11 inquiries were made. Mr. Ferraro said he asked about the
12 mail, and that was the sum and substance of what he did.
13 Mr. -- the other witness said he didn't speak to general
14 counsel about what they knew and when they knew it, for
15 example.

16 MR. HURLEY: Mm-hmm.

17 THE COURT: Which is the place where I definitely
18 would've gone to ask these questions.

19 MR. HURLEY: Mm-hmm.

20 THE COURT: You haven't put in any information
21 about that. I have no declarations from the general
22 counsel. So --

23 MR. HURLEY: That --

24 THE COURT: -- there's a gigantic hole in your
25 showing, isn't it?

1 MR. HURLEY: It certainly is a case you don't have
2 a declaration from the general counsel. We could provide
3 one. We did communicate with the general counsel's office
4 about this issue. I acknowledge we didn't put it in a
5 declaration. If that would be helpful, Your Honor, we can
6 certainly prepare one and provide it. Then --

7 THE COURT: No, I'm not asking to reopen the
8 hearing. We've just had our evidentiary hearing. And look,
9 you know, the Committee raised in its opposition the entire
10 fact that there was an objection in the Celsius case to the
11 retention of Kirkland and Ellis on the theory that it had a
12 conflict because of its representation of Voyager, and that
13 there would be conflicts between Voyager and Celsius.

14 Quite clear from Kirkland's response in August
15 that got from somebody the information that Voyager had had
16 an account and had withdrawn most of what was in that
17 account. And the committee said that, look, this means that
18 Kirkland, which obviously knew of the bar date, also knew
19 about the withdrawals. Your own witnesses have said that
20 just knowing that there were withdrawals was enough to alert
21 a sophisticated bankruptcy party that there are potential
22 preference issues.

23 The whole point of this in the context of the
24 Kirkland retention was whether there are -- were conflicts
25 between Celsius and Voyager, and your own witness says that

1 Kirkland should've told -- probably had an obligation to
2 tell Celsius if there was a bar date and if there was a
3 potential claim. So how do I -- and in response to all
4 that, in response to that issue being surfaced, you put in
5 no further information about who worked on the Kirkland and
6 Ellis retention issues, who at Celsius made the decision
7 about whether there was a conflict, what information they
8 looked at to determine whether there was a conflict, whether
9 they actually had communications with Kirkland about the
10 issue and about what kinds of claims Celsius might have
11 against Voyager, and who would pursue them, and when they
12 should be pursued.

13 You didn't respond to any of those obvious points.
14 And why shouldn't I just infer that the reason you didn't is
15 that the answers are all bad for you?

16 MR. HURLEY: So, two things, Your Honor. First,
17 the August 30th submission you're referring to, that
18 submission did not state that there were withdrawals made
19 during the preference period. It only said that Voyager had
20 -- that had an account balance at Celsius and had drawn down
21 pre-petition substantially on its accounts, but that same
22 thing could be said about literally hundreds of thousands of
23 other customers.

24 So, I don't think any of the Witnesses suggested
25 that just the information in the August 30th submission

1 would have been enough for anyone to conclude that there
2 was, or likely would be a preference claim against Voyager,
3 any more than with respect to any of those many thousands of
4 other creditors that you could say exactly the same thing
5 about.

6 THE COURT: But the whole point of the
7 supplemental declaration was to address the question of
8 whether there were conflicts, (indiscernible) being
9 conflicting interests between Celsius and Voyager. So, I --
10 isn't that something that ought to have been looked at at
11 the time, and discussed at the time?

12 MR. HURLEY: Well, so -- Kirkland made clear in
13 that document and in other statements to the Court that it
14 did not then perceive there to be any actual conflict
15 between Celsius and Voyager.

16 THE COURT: (overlapping conversation) No, no, no,
17 it said that there -- Kirkland wasn't going to handle any
18 issues between Celsius and Voyager. That's what it said.

19 MR. HURLEY: Kirkland also indicated at the
20 hearing in connection with that matter that it believed
21 there were no conflicts between Celsius and Voyager, which,
22 I think that hearing was in September.

23 THE COURT: If Voyager had a customer claim, how
24 could that possibly be the case? And you know, you might
25 quibble about what was said in the Kirkland declaration, but

1 you offered nothing. You offered -- you didn't respond to
2 that entire allegation at all. You didn't come forward with
3 where did the information come from, any information as to
4 whether there was anybody at Celsius who was involved in the
5 decision, so who at Celsius made the decision about whether
6 there was a conflict or not, 'cause that had to be made by
7 Celsius. I have to believe that somebody in the Director's
8 offices probably advised by General Counsel had to have been
9 involved.

10 I've heard from none of those people. This entire
11 -- this -- the entire question of what did that tell
12 Celsius, and when did it tell it was just raised by the
13 Committee, but ignored by you in your papers.

14 MR. HURLEY: So, Your Honor, the information that,
15 to this day I understand to be the only information
16 suggesting that there is a conflict is the 90-day preference
17 withdrawals, and the evidence we put forward was that
18 Celsius wasn't aware, and I understand Your Honor's concern
19 about the limits of what our evidence shows in that regard,
20 but that Celsius wasn't aware of those transfers until
21 November.

22 And so, the -- it -- so, the issue wasn't being
23 viewed as an active conflict, but rather there was awareness
24 obviously, because of the objection and for other reasons
25 that Kirkland was representing both companies, but there

1 wasn't, to our knowledge, any actually issue that had become
2 concrete and arisen that caused anybody at Celsius to
3 consider okay, we have a conflict that has to be addressed
4 now. That didn't happen until November.

5 THE COURT: (indiscernible) so you think Kirkland
6 might have known that there were withdrawals, but not when
7 they occurred? If --

8 MR. HURLEY: (overlapping conversation)

9 THE COURT: If that's your answer, wasn't it your
10 obligation to come forward with some evidence on the point?

11 MR. HURLEY: I -- so Your Honor, I -- obviously I
12 don't know exactly what Kirkland knew, but in the document
13 that we're talking about, the August 3rd submission, they
14 provided information only related to -- sorry, that
15 disclosed only that Voyager was a customer and had made
16 withdrawals, not that there were withdrawals during the
17 period that would cause Celsius to believe that it should
18 investigate those withdrawals as (indiscernible).

19 THE COURT: But you're the one who has the burden
20 of showing that there is an excuse for the delay here. You
21 don't do that just by saying well, that evidence isn't 100
22 percent an answer as to when Kirkland knew. All you're
23 doing is raising a question. You didn't go to Kirkland, you
24 didn't ask them what they knew, you didn't find out if they
25 knew about the timing, you didn't find out if they actually

1 appreciated that there was a preference issue, you didn't
2 ask them did you tell that to anybody.

3 You didn't ask them why -- if so why -- if you
4 didn't, why didn't you tell that to anybody. And your own
5 Witnesses have said that Kirkland should have told people.
6 So, whether the -- it seems to me you've got the burden
7 here. You don't satisfy it just by raising questions as to
8 whether the evidence is open and shut, dead set proof
9 against you. You've ignored the issue and given me nothing
10 on it.

11 MR. HURLEY: So, Kirkland is obviously in an
12 awkward position here, because it represents Celsius and
13 Voyager. And it -- we -- you're right, we did not get a
14 declaration from Kirkland with respect to exactly what they
15 knew. But it is certainly our understanding that they did
16 not become aware of the preference transfers until November,
17 and maybe I can provide a little color on that, Your Honor,
18 because what I understand did happen is that in early
19 November, a Celsius creditor flagged an issue related to
20 Voyager for Kirkland, and I believe that's what caused
21 Kirkland to ask A&M to look at the schedules and find out
22 hey, are there Voyager transfers we should be concerned
23 about?

24 And then -- and when the information came back
25 from an A&M, that's when they referred it to Akin Gump.

1 THE COURT: Who was the creditor, and why don't I
2 have any evidence of this?

3 MR. HURLEY: I -- Your Honor I don't have an
4 excuse, I would be happy to provide it to you, I understand
5 the evidence is closed, but if Your Honor would like to see,
6 we certainly can provide it. The creditor is a gentleman
7 named Mr. (Frishburg), I believe is his name. But that
8 happened, as I said, in early November and I -- my
9 understanding is that is what spurred the communication from
10 Kirkland to A&M.

11 THE COURT: On the excuse of (indiscernible)
12 neglect factors on the notice issue, you never actually --
13 you did give Voyager an address and never actually sent
14 notice to Voyager to change that address for notice
15 purposes, isn't that correct?

16 MR. HURLEY: So, the address was included in the
17 2020 original (indiscernible) agreement, and then in 2021,
18 it was amended. The amendment assigned all the rights from
19 Celsius U.K. to Celsius U.S. and E.U. And in that
20 agreement, it doesn't actually repeat the Celsius U.K.
21 address, which I think there was some confusion about in
22 some of the objections. What it provides is that the
23 services to be provided by Celsius U.S. are going to be
24 rendered subject to the terms of use.

25 And it includes a link to the terms of use, and

1 then that --

2 THE COURT: Is there a provision in the wallet
3 agreement, the original one, that says that communications
4 and notices between the parties are to be sent to the
5 following addresses?

6 MR. HURLEY: In the original wallet agreement,
7 yes.

8 THE COURT: Yes. And does that have the address
9 that Voyager used?

10 MR. HURLEY: It does, though the notice that was
11 provided by Voyager actually is not consistent with that
12 agreement. So, that agreement requires, let me just get
13 this for you so I get it right. That notices have to be in
14 writing and given in person by registered mail, by an
15 overnight courier service which obtains a receipt to
16 evidence delivery, or by facsimile or email transmission,
17 with written confirmation of receipt.

18 So, the method of notice here of course was just
19 ordinary U.S. mail, and as Your Honor pointed out, I don't
20 think there was any information provided by the Debtor about
21 whether, either it was any receipt or other information from
22 the required methods of delivery.

23 THE COURT: Well that's -- (indiscernible) let's
24 break that down. The bar date notice is sent by mail,
25 because that's what my order authorized. It's not

1 ineffective just because it failed to comply with con --
2 extra contractual requirements about notice, right?

3 MR. HURLEY: That's fair, Your Honor. I was just
4 pointing out that the contractual provision we were
5 referring to is -- does require a different method of
6 delivery.

7 THE COURT: So, the agreement said send notices to
8 this address, and when the -- you talked about the terms of
9 use, but there's no provision in the addendum, in the
10 assignment agreement that alters what the provision of the
11 agreement that says where notices are to be sent. Right?

12 MR. HURLEY: Certainly not expressly, Your Honor.
13 There is a link to the terms of use, which includes the
14 address for the new counterparty, but it's not expressly
15 described in the amendment.

16 THE COURT: And you don't have any evidence or you
17 haven't given me any that anybody gave or ever gave Voyager
18 notice of a change in the address?

19 MR. HURLEY: That is correct, Your Honor.

20 THE COURT: And how do -- we usually presume that
21 when mailings are sent that they're received, at least if
22 they're correctly addressed. I don't really know how long a
23 change of address lasts on the U.K. system. Do you -- I
24 haven't been given any evidence of that. But, as to actual
25 receipt, all I have is hearsay testimony that somebody in

1 the mail department didn't remember seeing it. But, I don't
2 -- it's not like any human being possibly remembers the
3 details of every single piece of mail that comes through for
4 a big enterprise, is it?

5 MR. HURLEY: That's certainly fair, Your Honor.
6 And again, there's limits to our ability to prove the
7 negative, here.

8 THE COURT: Yeah, I know that.

9 MR. HURLEY: Yeah.

10 THE COURT: I understand. But even so, I mean,
11 the mail department was asked, but I don't know how wide a
12 canvassing -- it doesn't sound like much canvassing was done
13 to anybody else. Who would the mailroom normally have sent
14 it to? Were those people canvassed to see if they actually
15 saw it? Didn't sound like that was done.

16 MR. HURLEY: You know, I have -- with respect to
17 the communications of the mail room, only the testimony that
18 was elicited moments ago by Mr. Ferraro. I certainly had
19 separate conversations with the general counsel's office
20 about the issue, but again, as you pointed out, that isn't
21 in evidence, but that -- we did what we thought we
22 reasonably could to confirm what we believed to be true,
23 which is that this notice, which was sent to an address in
24 London that hasn't been in use by Celsius for like, I guess
25 well over a year, didn't actually wind up being received by

1 anyone at Celsius. And that is our understanding.

2 THE COURT: Okay. And I don't really have any
3 testimony as to whether people did or didn't see the
4 publication notice. Right?

5 MR. HURLEY: You are correct.

6 THE COURT: Then, usually -- it's odd --

7 MR. HURLEY: (overlapping conversation) back up
8 actually, Your Honor, on that answer?

9 THE COURT: Yeah.

10 MR. HURLEY: I guess we do have evidence that Mr.
11 Ferraro didn't, at least not until after the bar date,
12 because Mr. Ferraro said, very clearly, I think, that he
13 didn't know about the bar date until November.

14 THE COURT: You know, we had two different
15 cryptocurrency cases filed within a short period in the
16 Southern District of New York. There hadn't been very many
17 filings in that industry, everybody was interested. It's
18 hard for me to believe that there weren't people at Celsius
19 who were charged with monitoring the docket in the Voyager
20 case, just to see what was happening, because that obviously
21 might shed light on what was going to happen in the Celsius
22 case. Wasn't anybody tasked with that responsibility?

23 MR. HURLEY: Not to my knowledge, Your Honor.

24 THE COURT: Okay. Again though, I don't have any
25 evidence of that, do I?

1 MR. HURLEY: I -- maybe I'm not remembering
2 clearly, and I'm sure I'm not, but I thought that Mr.
3 Ferraro had indicated that he also didn't believe anyone was
4 tasked with that role.

5 THE COURT: All right, on the Debtor's side I have
6 arguments about whether Celsius was a known or an unknown
7 creditor. Aren't your own arguments about why Celsius
8 should have known that it had a claim kind of undercutting
9 your own position as to whether Voyager should have known
10 that Celsius had a claim?

11 MR. HURLEY: I certainly understand the point.
12 One of the focuses that we provide in our reply is on the
13 fact that, unlike the cases that the objectors rely on,
14 Celsius was not a truly unknown entity, like a tort claimant
15 or an employment discrimination claimant would be and was in
16 some of the cases they cited. There was an ongoing
17 commercial relationship, and we are on their schedules. And
18 then the Debtors I think argued, paragraph 21, that there
19 was no way they could have predicted that there would be a
20 preference claim, because they all -- they couldn't have
21 predicted that Celsius would take the position that
22 deposited assets are a state property.

23 And we point out that Voyager, I understand, took
24 a similar position in its own case. And presumably had
25 records of its withdrawals during the period, and it's

1 certainly putting that information together. We think that
2 it's plausible to argue that these are -- that Celsius was
3 ascertainable as a creditor of wayer.

4 THE COURT: Yeah, let me ask the same question of
5 Mr. Murphy or whoever's going to speak for the Debtor on
6 this. It seems to me all of your arguments about why
7 Celsius should have known that it had a claim undercut your
8 position that Voyager didn't know that Celsius had a claim.
9 So, you can't have it both ways, can you?

10 MR. WHALEN: Yes, Your Honor, Michael Whalen on
11 behalf of Voyager. I think that there's a key distinction
12 here, which is that as is evident from Celsius' filings and
13 declarations, there was an ongoing commercial relationship
14 between Voyager and Celsius, and the very nature of the
15 preference claim is that Celsius has taken a position that
16 assets that they believe are assets of the estate have
17 exited the estate. But, in the course of their commercial
18 relationship prior to Celsius making the preference claim,
19 we were engaged in ordinary course transactions, which
20 included withdrawing those funds.

21 So, the fact that they existed in our commercial
22 relationship would give Voyager every reason to believe that
23 Celsius viewed those assets to be property of Voyager, that
24 Voyager could withdraw, indeed did withdraw. Celsius also
25 has taken a slightly different position than Voyager. While

1 it is true that Voy --

2 THE COURT: Let me stop you. Let me stop you.

3 While you -- while the Voyager assets were in the earned

4 accounts, right? (overlapping conversation) Saying that

5 they belong to Celsius and not to Voyager, and that

6 Voyager's claim was an unsecured creditor claim is exactly

7 akin to the same position that Voyager itself took with

8 respect to its own equivalent of the earn accounts, isn't

9 it?

10 MR. WHALEN: Yes, Your Honor, but we think that

11 the added distinction of Celsius' position as to title in

12 the withhold accounts is relevant and also the, again,

13 ordinary course of the commercial relationship, these are

14 defenses that we would obviously raise if and when we get to

15 a preference action, but it was entirely reasonable for

16 Voyager to believe that, unless asserted, or at least even

17 noticed, that there was no claim from Celsius with respect

18 to these amounts.

19 THE COURT: Well, isn't there a claim of

20 preference based on the dates of transfers from the earn

21 accounts to the withhold accounts, rather than the dates of

22 withdrawals from the withhold accounts?

23 MR. WHALEN: I -- yes, Your Honor, but there was

24 even some uncertainty in Celsius' own papers initially when

25 they filed, that they at least raised the possibility in one

1 of their first-day motions that they could assert ownership
2 over withhold account amounts as well. That has since come
3 out differently, after some litigation in front of Judge
4 Glenn, but at least initially they had even taken that
5 position.

6 So, there was a lot of uncertainty around the
7 position that they were ultimately going to assert.

8 THE COURT: Well, the withhold accounts didn't
9 exist before the preference period, is that right?

10 MR. WHALEN: To be candid, Your Honor, we are not
11 entirely sure of the date at which the withhold accounts
12 came into effect. We, on our end, had a long period of
13 engaging with the platforms where there was only one
14 account, and then at some point we noticed that there was an
15 additional account, an additional step involved in
16 withdrawing them, but we did in fact observe that and use
17 that pathway to take our funds off, and some did, in fact,
18 come off during the preference period that's alleged by
19 Celsius.

20 THE COURT: Okay. You know, on many of the -- let
21 me ask the Debtors and the Committee. On many of the
22 factors here, it seems to me, whether there would be a
23 significant impact on the proceedings, whether there would
24 be significant prejudice, whether there is good faith, I
25 don't see that there's really much to say for the Debtors

1 and the Committee's position. The argument about prejudice
2 is built on cases that have said well, even if this is a
3 small one, I might get a gigantic influx of other claims
4 from other people. Given the nature of this claim and the
5 circumstances, how could that possibly be a worry?

6 MR. AZMAN: Your Honor, it's Darren Azman from
7 McDermott for the Committee. We now have several additional
8 crypto Chapter 11 cases that have been filed since Voyager.
9 I don't think it's without -- outside the realm of
10 possibility that other of these estates that are out there
11 could take a similar position here. I actually am very
12 concerned about it.

13 And you -- Your Honor's aware of certain arguments
14 that FTX and its affiliates have raised about claims that
15 they may have in these cases. They may very well be coming
16 to Your Honor shortly to ask for inexcusable neglect to file
17 a crypto claim.

18 THE COURT: FTX didn't even have any right to
19 recover preferences until it filed its own case, which was
20 after the Voyager bar date, right?

21 MR. AZMAN: Your Honor, I'm hesitant to speak on
22 that issue, because it's under investigation, but that's --
23 doesn't sound wrong.

24 THE COURT: Yeah, I'm not -- you know, the idea of
25 whether I would get a claim from another cryptocurrency or

1 other Debtor that might have a preference claim, it just
2 seems ludicrous to suggest that that's going to open the
3 floodgates and raise a lot of issues. I might have claims
4 from later filing cryptocurrency cases that might raise bar
5 date issues about whether they should be fairly held to the
6 bar date when they didn't -- weren't in bankruptcy, and
7 therefore didn't have a preference claim at the time, those
8 to me seem entirely different issues.

9 MR. AZMAN: That's fair, Your Honor. I mean, the
10 other thing I'd mention is that if you look at the Second
11 Circuit case law on this, it's not just whether there's a
12 significant impact on creditor recoveries or comparing the
13 size of the claim to the total creditor pool, but if you
14 look at cases like Northwest Airlines, Northwest Airlines
15 says that the argument that a claim is de minimis, when
16 viewed in the context of an entire case, was rejected by the
17 Second Circuit in the Enron case.

18 So, that -- just because it's a small drop in the
19 bucket, and nobody can (indiscernible) that, right,
20 \$7,000,000 here is a small drop in the bucket in their
21 creditor's claims pool, but that's not the test. The test
22 is that de minimis doesn't make it not important. And
23 \$7,000,0000 --

24 THE COURT: Let me push back on that. If the rule
25 were as you say, then every single motion for relief from

1 the bar date would be deemed to be prejudicial, and it
2 wouldn't even be a factor for the Court to consider.

3 MR. AZMAN: Oh, I don't agree. So, I guess I --
4 let me finish my point, so my point was Court should and do
5 look at the aggregate dollar amount as a whole number,
6 whether it's a lot. I think we all agree that \$7,000,000 is
7 a big number. \$50,000, not so much. \$100,000, not so much
8 in a complex Chapter 11 case, but by any measurement,
9 \$7,000,000 is a lot of money. I think most of the creditors
10 who lost their life savings in this case would agree that
11 \$7,000,000 is a lot of money.

12 THE COURT: By the way, I actually don't think
13 that prejudice is supposed to be measured by the size of the
14 claim. It seems to me prejudice is supposed to be measured
15 by whether the late filing, as opposed to a timely filing,
16 is prejudicial to you. And I don't see how a late filing of
17 this particular claim would make any difference to you in
18 terms of whether it's filed now or whether it had been filed
19 on October 1st. Tell me where I'm wrong.

20 MR. AZMAN: Well, I guess I would go back to the
21 fact that that is not the most important factor that Courts
22 consider in determining whether excusable neglect has been
23 satisfied. It's the reason -- I know that's not answering
24 your question directly, but I take Your Honor's point.

25 THE COURT: Okay.

1 MR. WHALEN: And Your Honor, Michael Whalen for
2 the Debtors. We would agree. You know, we would highlight,
3 as Mr. Azman did, that the predominant point is the excuse,
4 and that if there's no sufficient excuse that can overcome
5 even favorable factors elsewhere, but we do agree with Your
6 Honor's reading, but we think that it's a bit of a balance
7 between timing and amount and it's something inequitable
8 between (indiscernible), but this does relate somewhat back
9 to the plan negotiation point, and that we are approaching,
10 you know, we're closing in on a month from the confirmation
11 hearing.

12 So, there would be some administrative burden, but
13 even if we were to agree with Your Honor, we would go back
14 to the point that we think excuse is the main -- the key
15 issue here.

16 THE COURT: Okay. Anything else anybody wishes to
17 argue or to raise on the excusable neglect issue?

18 MR. HURLEY: Your Honor, it's Mitch Hurley. If I
19 could just make a couple of points on excusable neglect.
20 And I think what I really want to do is kind of zoom out and
21 make a bigger picture point, which is that the kind of
22 timeframe that we're talking about, in terms of the delay
23 from the bar date until when this motion is filed, in the
24 spectrum of cases that have been cited by all the parties,
25 is really very brief.

1 So, the bar date was October 3rd, we filed our
2 motion on December 13th. And if you measure the delay from
3 the date of discovery of the claim in early November, the
4 period shorter, and then this, I just want to make sure this
5 is clear to Your Honor, that much of the time between when
6 Akin Gump was retained in November until we filed in
7 December was because we were working with the Debtors to see
8 if we could come to a resolution that wouldn't require this
9 motion practice.

10 So, we actually contacted them, basically to
11 request the relief we're seeking on the motion now,
12 consensually, on November 15th, and then they -- we
13 contacted Kirkland, and Kirkland told us on that call that
14 Quinn Emanuel was going to handle the conflict issue. Took
15 some time for us to be able to get on the phone with Quinn,
16 they weren't available right away. They then asked us, I
17 think it was -- our call was on November 28th, I believe,
18 our first one. Sorry, on December 1st.

19 They asked us to put our request in writing, which
20 we did and sent over on December 2nd. And then on December
21 6th, Quinn actually told us that Paul Hastings was going to
22 be handling the matter for Voyager, and so we then spoke to
23 Paul Hastings on December 8th, and again on the 12th, and
24 they indicated that they were -- had to discuss it with UCC
25 counsel, and at that point, we hadn't given up hope on a

1 negotiated resolution.

2 But that's when we filed, the next day. So, the
3 period of time is brief, even I think if you include that
4 settlement period, and even shorter if you don't. And from
5 our perspective, if you look at the cases cited by the
6 parties, and there were dozens, there really aren't any
7 cases where the period of delay is as short as what I just
8 described. And where you have a situation here, like here,
9 where the Claimant has not said -- you can almost -- all
10 those other cases, the Claimants actually expressly admitted
11 that it was aware it had the claim before the bar date
12 passed, and that it was aware of the bar date. In almost
13 all of those cases.

14 So, a situation like this one, where we've put in
15 evidence, I know Your Honor has questions about whether more
16 evidence could have been supplied, but we put in evidence
17 that Celsius wasn't aware of the claim before the bar date
18 passed and wasn't aware of the bar date itself until after
19 it passed, and then couple that with the relatively short
20 delay, and I really do submit, this case is just different
21 than all of the other cases that are relied on by the
22 Objectors in those particular regards.

23 And in addition, in the se -- because the motion
24 obviously was filed before there was a confirmed plan, as
25 you were just discussing. So -- but that's, I guess kind of

1 the big picture point I would want to make with respect to
2 excusable neglect. I really do think this is, in terms of
3 sort of the spectrum of use kinds of cases, is very far on
4 the side of a comparatively short delay where you have this
5 circumstance of the actual lack of knowledge of the claim
6 and of the bar date before the bar date passed, which is, in
7 their cases, in almost every one, there's not even a dispute
8 about whether the Claimant knew about the existence of the
9 claim, and in many cases knew about the existence of the bar
10 date. So, I do think it's a very different case, and more
11 favorable for Celsius on excusable neglect.

12 THE COURT: Is there anything else?

13 MR. AZMAN: Your Honor, I apologize, I just --
14 it's Darren Azman again, I just wanted to make two brief
15 points, but I'm not sure if Mr. Hurley was done.

16 MR. HURLEY: Go. Go ahead.

17 MR. AZMAN: Okay. Your Honor, on the excusable
18 neglect standard, I take Mr. Hurley's point on this not
19 being a year delay and there not being significant prejudice
20 in terms of the overall creditor body here. I get all that,
21 but if you read all of the case law collectively, what you
22 come away with is that those are elements that can taint
23 your excusable neglect claim, if you waited two years or if
24 there's significant prejudice.

25 But they aren't elements that can satisfy the test

1 alone. Those are elements that Courts look to to
2 (indiscernible) the claim, if you otherwise satisfied the
3 remaining elements, including the most important one, which
4 is the reason for the delay. And so, I think it's a bit of
5 a distraction to say well, it's not as bad as it could have
6 been. Because I agree, it's not as bad as it could have
7 been. They did act relatively quickly within a couple of
8 months, that's undisputed. But that doesn't solve the
9 shortcomings that we've brought out through testimony today,
10 through all of the Witnesses.

11 And so, on excusable neglect, I just -- I don't
12 think those el -- other elements, they carry the day. They
13 cannot carry the day for satisfying excusable neglect
14 standard when the most important element here is not
15 satisfied. The other point I want to make, which we've
16 touched on a little bit, is that Celsius was not a known
17 creditor. Celsius has tried to distinguish the XO
18 Communications case on a number of grounds in their
19 briefing, and I agree, there are differences in the facts,
20 but none of those distinctions alter the conclusion.

21 A preference claim, particularly under these
22 unique and novel circumstances, is not a known claim. Judge
23 Gonzalez stated in the World Comm case, which is cited by
24 Celsius, this Court found in in re: XO Communications that
25 an entity that holds a preference claim is not generally

1 considered to be a known creditor of a Debtor based solely
2 on the preference.

3 And this is continuing to quote, in that case,
4 meaning XO Communications, it was the -- it was determined
5 that constructive notice through newspaper publication, as
6 was provided here, would be proper. Your Honor, Celsius can
7 distinguish the XO case all it wants, but the holding's
8 clear. A Debtor with a preference claim is not a known
9 creditor, and as such, Voyager's notice by publication alone
10 was sufficient. Your Honor, that's all I have to add.

11 MR. WHALEN: Your Honor, Michael Whalen for the
12 Debtors. I would just echo the points that Mr. Azman made,
13 particularly with respect to the differences between the
14 time of the delay and the reasons for the delay, which are
15 distinct pioneer factors, and it's certainly a -- not news
16 to Your Honor as you have referred to these points multiple
17 times, but a Second Circuit has repeatedly taken a hard line
18 approach to the pioneer factors and held that the Second
19 Circuit itself continues to expect that a party claiming
20 excusable neglect will, in the ordinary course, lose under
21 the pioneer test.

22 So, while it may be seemingly a harsh result or a
23 unique case, this is exactly how the pioneer test was
24 crafted, and we have nothing else from our end.

25 MR. AZMAN: May I respond very briefly, Your

1 Honor?

2 THE COURT: Go ahead.

3 MR. AZMAN: Okay. So, the cases though, and the
4 facts of the cases that the objectives rely on, and again I
5 mentioned this before, but their cases were, usually the
6 delay is measured in years, sometimes in decades. Not in
7 every case. There's a couple they cited where the delay is
8 shorter, and I guess arguably more comparable to the period
9 of time we're talking about here, but they're otherwise
10 distinguishable. So, XO for instance, in that case the
11 motion for lead to file the lay claim was made about seven
12 months after the bar date.

13 So, obviously that period's longer than the one
14 here, but the facts are also different for really the
15 reasons I just identified, Your Honor. So, in that case,
16 the Claimant, Trilegiant, appears to have been aware it had
17 a preference claim against XO before the bar date ran.
18 Trilegiant had filed for bankruptcy more than a year before
19 the XO bar date, which means of course, that its preference
20 claim arose more than a year before the bar date.

21 According to the Court, the record, and this is a
22 quote, the record reflected that Trilegiant was aware that
23 it had preference claims, and not only that, that it was
24 aware of the amount of the preference claim against XO,
25 because the Court said it was large enough that the size of

1 that preference claim should have caused Trilegiant to make
2 further inquiries that would have led to discovering the
3 time of the bar date. But not only did Trilegiant not make
4 those inquiries, it chose to wait. It made what the Court
5 described as an informed decision, notwithstanding knowing
6 about its claim, not to pursue preference claims until after
7 Trilegiant's own bankruptcy was finished.

8 In contrast here, Celsius is only just a little
9 bit more than two and a half months into its bankruptcy
10 proceeding by the time the Voyager bar date passed. We put
11 in evidence that in fact, it's not typical on a complex case
12 for there to be a preference analysis, in that period of
13 time, at the beginning of a case, and to their credit,
14 Voyager doesn't dispute that. They acknowledge that that's
15 right. And I think that raises another important
16 distinction. On -- in (indiscernible), it at least appeared
17 that the preference claim against XO was one of like, a
18 comparative handful, but as you heard from the testimony
19 here, just based on the nature of Celsius' business, there
20 were literally hundreds of thousands of potential preference
21 Defendants.

22 600,000 mo -- or more customers with balances on
23 the platform. Most of whom probably made withdrawals at
24 various times, and certainly thousands of them, as -- would
25 have done so during the preference period. So, there's

1 really -- there's no reason to think, unlike in the XO case,
2 that the wager information should have stood out to Celsius
3 the way the large amount of the XO claim did in
4 (indiscernible). And the other sort of short timeframe case
5 they cite, Your Honor, is Eagle-Picher, that's a 1993 case
6 from the Southern District of Ohio.

7 And it's really the same grounds that can
8 distinguish them and most of the other cases from ours. In
9 that case, the Claimant admitted it received actual notice
10 of the bar date a full three months before the bar date
11 expired, and the Claimant did not dispute that it was fully
12 aware that whole time of the existence of its claim against
13 the Debtor. Instead, it just tried to justify its failure
14 to file by the known bar date because its other duties and
15 priorities took precedence. The Court read that and said
16 that specifically in the opinion, it's expressing
17 indifference to the requirement to comply with known Court
18 ordered -- a known Court ordered bar date.

19 And that the Claimant had just flouted the bar
20 date, even though the Claimant knew about its claim and knew
21 about the bar date. And that is another factor that we
22 submit just distinguishes this case from all the ones that
23 are relied on by the objectors, and we haven't seen a case
24 with similar circumstances that result in a request for a
25 leave to file a late claim being denied. Thank you, Your

1 Honor.

2 THE COURT: All right, I think we're starting to
3 get repetitive, so I'm ready to make a ruling unless there's
4 something new that anybody wishes to add. All right. The
5 parties have argued as to whether relief from the bar date
6 should be granted in favor of Celsius to file a preference
7 claim against Voyager. The Voyager debtors and the
8 Committee have made arguments about whether or not, for
9 example, Celsius was a known creditor or not, and what kind
10 of notice it was entitled to, and there have been arguments
11 about the notice that was sent.

12 I do not think those really are decisive at all in
13 regard to the excusable neglect inquiry. They might have
14 been decisive if we had a due process contention here, but I
15 don't believe we do. Celsius admittedly had signed an
16 agreement with Voyager that had a contractual provision in
17 it as to where notice was to be sent, and while Celsius
18 argues that Voyager maybe could have figured out that a
19 different address was appropriate, there is no evidence that
20 Celsius ever notified Voyager of a new address, or that the
21 subsequent agreement that they entered into made any change
22 to the contractual provision, which said that notices were
23 to be sent to that address.

24 I therefore don't think there's any due process
25 issue as to the addressing of the notice, and where it was

1 sent, and it was supplemented by publication notice. I'm
2 not at all convinced by Voyager's arguments about whether
3 Celsius was or was not a known creditor, because as I said
4 during the argument, so much of what Voyager and the
5 Committee are arguing as to why Celsius allegedly should
6 have known that it had a preference claim against Voyager
7 kind of cuts the other way as well, in terms of whether
8 Voyager ought to have known that Celsius had a claim against
9 Voyager.

10 The argument that it's an unknown claim just
11 because sometimes people don't pursue preferences, I realize
12 that's in one reported decision, I don't find that
13 persuasive at all. The arguments that the Celsius parties
14 have made about how gosh, they couldn't have been expected
15 to find this needle in a haystack regarding Voyager because
16 they were putting together such huge schedules might have
17 some effect if there was no reason to think that Celsius
18 actually knew, or should have known about the bar date
19 itself, and the theory there would be that the only thing
20 that alerted them they had a claim was their own review of
21 their own business records in their own bankruptcy case.

22 I understand that argument, but it's all premised
23 on something that the evidence failed to establish, which
24 was the notion that Celsius did not know, and had no reason
25 to know of the bar date. And of the need to find out

1 whether it had a claim against Voyager, and to pursue that
2 within the time that had been -- that -- the deadline that
3 had been set by the Court. One of the Witnesses, Mr.
4 Ferraro, said that he wasn't aware of the bar date, but it
5 doesn't appear that he made any inquiry of others, he didn't
6 testify as to any inquiry of others.

7 His inquiry was focused on whether he could find
8 anybody who remembered receiving a notice that had been
9 mailed to Celsius U.K. He didn't find anybody in the mail
10 room, mail department who remembered seeing the notice,
11 which is not particularly strong evidence, in my regard,
12 even on the issue of whether Celsius U.K. actually received
13 the notice that might have been forwarded to it. But beyond
14 that, in terms of whether anybody actually knew at Celsius
15 U.K. or anywhere else within Celsius, I only have Mr.
16 Ferraro's testimony that he didn't know, and I have
17 equivocal testimony, quite frankly, by the other Witness,
18 Mr. Bixler, who says that well, he certainly knew about it
19 in November.

20 Might have known about it before then, but he
21 isn't sure. In terms of an enterprise claiming that it
22 didn't know about the bar date, that's a pretty thin
23 (indiscernible), to say the least. But, of greater concern
24 to me is the fact that Celsius' counsel, Kirkland & Ellis,
25 are the same attorneys, not just the same law firm, but for

1 heaven's sake, the same attorneys who represent Voyager, and
2 who made the bar date motion in the Voyager case.

3 The idea that Celsius' own counsel wasn't aware of
4 the Voyager bar date is a non-starter. Of course they knew
5 about it. Celsius argued in its papers that somehow that
6 wasn't within the scope of Kirkland & Ellis' employment for
7 Celsius, but its own Witnesses agreed during testimony today
8 that Kirkland & Ellis, if it knew about a bar date and knew
9 about preference issue, had an obligation to tell that to
10 Celsius.

11 Furthermore, what is particularly troubling to me
12 is that these issues should have been looked at when a
13 customer of Celsius objected to the retention of Kirkland &
14 Ellis, specifically on the ground that there were potential
15 conflicts between Voyager and Celsius, and therefore that
16 Kirkland & Ellis was in a conflict position, because it
17 represented Voyager and was proposed to represent Celsius.
18 Any bankruptcy professional knows that one source of
19 potential conflict is a preference claim, and it appears
20 that some review of the Voyager records with Celsius was
21 done, and that Kirkland & Ellis then filed a supplemental
22 declaration on August 30th, more than a month before the
23 Voyager bar date, that acknowledged that Voyager had been a
24 customer of Celsius, and that Voyager had made withdrawals.

25 Doesn't explicitly say when the re -- withdrawals

1 occurred, but I have no reason to think that Kirkland &
2 Ellis wasn't aware of those dates. More importantly, I
3 can't -- I will not assume that only Kirkland & Ellis was
4 making the decisions as to whether it was conflicted.
5 Somebody at Celsius had to make a decision as to whether
6 there was a conflict, and whether Kirkland & Ellis should be
7 retained in light of whatever the Voyager issues were.
8 Somebody had to be providing the information, should have
9 been, at least, looking at it from the point of view of
10 Celsius.

11 I would assume somebody, some Director or some
12 higher level officer who was working with Kirkland and
13 making the hiring decisions, perhaps the general counsel,
14 perhaps both. Somebody, when that objection was made on
15 behalf of Celsius, should have been looking at it and
16 asking, well, what are the potential issues? And again, the
17 testimony was that Kirkland & Ellis, if it saw a potential
18 preference issue, should have told Celsius.

19 Well, I find it hard to understand in August, once
20 Kirkland & Ellis knew that there were -- had been
21 withdrawals and knew obviously, of the Voyager bar date, why
22 under Celsius' own testimony, that doesn't mean that
23 Kirkland -- that seems to me that means under Celsius' own
24 testimony that Kirkland should have explicitly said Celsius,
25 here it is. You know, I'm your counsel, and here's

1 something you need to look at, because there's a bar date
2 out there.

3 There can't be any question that Kirkland & Ellis
4 itself knew about the bar date. I am especially troubled
5 that after the Committee and the Debtor raised the issue
6 about Kirkland's statements and about how somebody had
7 obviously looked at some aspect of this in August, Celsius
8 ignored the issue completely, made no further declarations,
9 offered no further evidence as to who at Celsius might have
10 worked with Kirkland on that issue, might have been aware of
11 the issue, what communications they had with Kirkland about
12 the issue.

13 Absolutely nothing on that point. And while the
14 two Witnesses who were proposed, Mr. Bixler and Mr. Ferraro
15 said that they weren't asked until November to look into
16 these issues, and one of them, Mr. Bixler said it was
17 Kirkland that asked him, there's no indication that anybody
18 tracked backwards to see who else at -- in the counsel
19 department at Celsius or any of their Directors or any of
20 the other people who'd communicated with Kirkland, what
21 questions they had had, and what discussions they had had
22 about the -- these issues.

23 If, as Mr. Hurley agreed during argument the test
24 is whether Celsius knew or should have known about the bar
25 date, should have had actual knowledge, no question that its

1 counsel had actual knowledge. And there's no question under
2 the circumstances in my mind that it should have been
3 discussed. So, in the absence of any reason -- any evidence
4 as to whether it was discussed, or any explanation as to why
5 -- if it wasn't discussed, why it wasn't and why that should
6 excuse Celsius, I'm required, I think, to find on the
7 evidence that there's insufficient showing that there was a
8 valid reason for the delay.

9 I think on the other factors, if I were -- on the
10 length of time on the delay, it seems to me that there was a
11 one-month delay before the issue was raised with Voyager,
12 and a two-month delay before the motion was actually filed.
13 That's not a particularly long period of time. If I were
14 completely convinced that Celsius had had no prior reason
15 even to know that there was a preference claim or a bar date
16 in the Voyager case, that might be persuasive.

17 But, in the context here, it's not enough, it
18 seems to me, if Celsius should have known, for Celsius to
19 say well, you know, we shouldn't be required to do anything
20 earlier than we -- then it took us to compile the full
21 schedule. The whole point of a bar date notice, whether
22 it's delivered to a Debtor or to anybody else, is that
23 you're supposed to prioritize in your efforts to figure out
24 whether you have a claim, and to get it filed before the
25 deadline.

1 So, the fact that it didn't surface in the
2 ordinary course of the Celsius proceedings would only be an
3 excuse if there was no other reason, and no other actual
4 knowledge of the bar date. But I am -- as I said, Celsius'
5 primary bankruptcy counsel obviously knew about the bar
6 date, so the argument that there was no actual knowledge
7 that was or should have been com -- submitted to Celsius
8 itself seems to be missing here.

9 So, I am going to deny the motion, but without
10 prejudice. It's tempting to say we've had our factual
11 hearing today, but I want to be perfectly fair to all the
12 parties, if Celsius wants to renew the motion because it
13 thinks it can actually excuse what happened or that there's
14 actually explanations for what happened with Kirkland or
15 better reasons why I should find that the issues that were
16 clearly surfaced in connection with the Kirkland retention
17 somehow didn't and shouldn't have alerted Celsius to the
18 existence of the claim and the need to take action, then
19 they can try to convince me today of that.

20 But, based on the record that I have so far, they
21 have not done so. And so, the primary factor that I have to
22 consider is whether there is a valid reason for the delay
23 they have failed to meet. And there is some delay, there is
24 some prejudice, they're not particularly onerous to the
25 point where they would overcome and -- other factors, but I

1 think the primary factor of the Second Circuit
2 (indiscernible) to look at is not satisfied here.

3 And you can't, if you have failed to satisfy that
4 factor, you can't get relief just by saying that it's only a
5 short period of time, or just by saying that it's not
6 particularly prejudicial. Those are factors to be weighed,
7 but we're the primary factor. So, plainly, it's not met. I
8 think on this record it isn't, here. And I think I have to
9 deny the request for relief of the party.

10 Let me make another point. This is not a
11 particularly huge claim or a huge amount at issue. I worry
12 about how much effort has already gone into it, and how much
13 money that the parties are spending on it. How much, in
14 light of the amount that's at stake, that really makes sense
15 in the grand scheme of things. Perhaps the parties ought to
16 sit down with Kirkland & Ellis and find out what it knew and
17 what it said and if it didn't say anything, why it didn't
18 say anything. And make some reasonable judgements among
19 themselves as to what it's fair to do under these
20 circumstances.

21 I am not going to get to the question of whether
22 stay relief should be granted, because since there's no
23 claim that can be pursued, there's no reason for stay
24 relief. But, I will say to alert the parties on this point
25 that, to the extent that the Debtors have implied that they

1 wish to make arguments about the withhold accounts and
2 whether they were or were not property and whether prior
3 transfers to the withhold accounts should be treated as
4 preferences, those are issues Judge Glenn is going to be
5 deciding as to many customers, and if it -- if those are
6 going to be issues, or were to be issues in opposition to a
7 claim, and if I were to allow a late claim, then there is no
8 way I would entertain a separate litigation of those issues
9 in my Court.

10 If there are other defenses, then I'm not 100
11 percent convinced that the -- they would need to be decided
12 by Judge Glenn as opposed to by me, or that it would be
13 appropriate to do so, but we'll deal with that if and when
14 we ever get up to a point where submitting a late claim
15 should (indiscernible). All right? Is there anything else
16 I need to rule on? Did I forget anything?

17 MR. HURLEY: Not from Celsius' perspective, Your
18 Honor.

19 THE COURT: Okay. All right, and you agree on the
20 form of an order, please, and submit it?

21 MR. HURLEY: Certainly.

22 MR. AZMAN: Yes, Your Honor.

23 THE COURT: Is there anything else to be done
24 today? Okay. Thank you very much. In that case, we are
25 adjourned. Thank you.

1 MR. HURLEY: Thank you, Your Honor.

2 MR. AZMAN: Thank you, Your Honor.

3 (Whereupon these proceedings were concluded at

4 1:36 PM)

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Motion denied without prejudice 102 9

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: January 27, 2023

[& - 8th]

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Exhibit D

Updated Objection Deadline: January 17, 2023
Hearing Date: January 24, 2023 at 11:00 a.m. prevailing Eastern Time

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:
	:
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> ,	:
	:
	:
Debtors.	:
	:
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Chapter 11
Case No. 22-10943 (MEW)
Jointly Administered

**UPDATED MOTION OF CELSIUS NETWORK LLC FOR ORDER (I) LIFTING THE
AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362(d)(1) AND BANKRUPTCY RULE
4001 AND (II) GRANTING LEAVE TO FILE LATE PROOF OF CLAIM PURSUANT TO
BANKRUPTCY RULES 3003(c) AND 9006(b)(1)¹**

¹ Out of an abundance of caution, this motion has been updated and re-filed to reflect the Court's amended objection deadline of January 17, 2023. *See* So Ordered Joint Stipulation [Docket No. 781]. This updated motion remains unchanged from the motion filed on December 14, 2022 [Docket No. 727] in all other respects.

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1. Celsius Network LLC (“Celsius”) hereby submits this motion (the “Motion”) pursuant to section 362(d)(1) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 3003(c)(3), 9006(b)(1) and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order (i) lifting the automatic stay to permit commencement of an adversary proceeding against Voyager Digital LLC (“Voyager”) to recover preferential transfers and (ii) extending, nunc pro tunc, Celsius’ time to file a proof of claim in this action despite passage of the bar date. The Motion is updated solely to reflect the new objection deadline pursuant to the Court’s So Ordered Joint Stipulation and Agreed Order signed on December 22, 2022 [Docket No. 781]. In support of this Motion, Celsius respectfully represents as follows:

PRELIMINARY STATEMENT

2. Both Voyager and Celsius are currently in Chapter 11 reorganization proceedings. They also had a business relationship. Relevant here, Voyager maintained Earn accounts with Celsius, which earned significant rewards for its users. After the Voyager bar date passed, Celsius became aware that Voyager transferred approximately \$7.7 million worth of cryptocurrency from its Celsius “Earn” program accounts to so-called “Withhold” program accounts during the 90 days prior to Celsius filing for chapter 11 bankruptcy, and withdrew approximately \$5.9 million worth of cryptocurrency from its Withhold accounts. Section 547 of the Bankruptcy Code allows Celsius to claw back that cryptocurrency, and Celsius seeks an order lifting the automatic stay in order to assert such a preference action in its own bankruptcy case. Further, Celsius seeks a nunc pro tunc extension of its time to file a proof of claim. Because Celsius did not receive notice of the Voyager bar date and was otherwise busy processing a massive amount of information for its own bankruptcy, the bar date passed before Celsius became aware of its claim against Voyager.

Accordingly, Celsius asks that this Court grant the limited relief it seeks so that it may pursue its preference action against Voyager and assert a corresponding claim against Voyager in this action. Celsius respectfully submits that such an order would be consistent with the goals and purposes of the Bankruptcy Code and would not interfere with Voyager's bankruptcy action or the rights of any stakeholder therein.²

JURISDICTION

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § § 157 and 1334. Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. § § 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

4. The statutory predicates for the relief sought herein include section 362(d)(1) of the Bankruptcy Code and Rules 3003(c)(3), 9006(b)(1) and 4001 of the Bankruptcy Rules.

BACKGROUND

A. The Voyager Bankruptcy Cases

5. On July 5, 2022 (the "Petition Date"), Voyager and each of its affiliated debtors (the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Voyager Bankruptcy"). The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b). On July 19, 2022, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors

² Celsius noticed the Motion to be heard on January 24, 2023, the next available omnibus hearing date, in accordance with Paragraphs 1 and 48 of the Case Management Order [No. 22-10943, Docket No. 240] (the "CMO"). For the avoidance of doubt, Celsius acknowledges that it is deemed pursuant to Paragraph 49 of the CMO to have consented to the continuation of the automatic stay pending the conclusion of a final hearing and determination under Bankruptcy Code 362(d) and will not assert the termination of the automatic stay based on Bankruptcy Code section 362(e).

(the “Committee”). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

6. On August 3, 2022, this Court set a bar date of October 3, 2022 for filing unsecured claims in Voyager. *See Order (I) Setting Deadlines for Submitting Proofs of Claim, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* [No. 22-10943, Docket No. 218]. Notice of the bar date for Celsius (the “Notice”) apparently was sent by Voyager to an incorrect mailing address and, on information and belief, Celsius never received the Notice. *See Affidavit of Service re: Notice of Deadline Requiring Submission of Proofs of Claim, Ex. A* [No. 22-10943, Docket No. 459]; *Declaration of Christopher Ferraro in Support of Motion of Celsius Network LLC for an Order (i) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (ii) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1)* (hereinafter the “Ferraro Decl.”) at ¶¶ 6–9 (explaining that: (a) approximately one week before the bar date, Voyager claims to have mailed notice of the bar date to Celsius UK—the wrong entity—instead of Celsius; (b) Voyager mailed that notice to an out of date address in London that Celsius UK no longer occupies; and (c) no Celsius agent or employee ever received the notice).

7. On November 18, 2022, Voyager filed an amendment to its schedule of assets and liabilities, and gave notice of an extension of the bar date to December 23, 2022 for creditors with a claim arising from that amendment. *See Amended Schedules* [No. 22-10945, Docket No. 18].

B. The Celsius Bankruptcy Cases

8. Celsius, together with its affiliates, is one of the largest and most sophisticated cryptocurrency-based finance platforms in the world and provides financial services to institutional, corporate, and retail clients across more than 100 countries. Celsius was created in 2017 to be one of the first cryptocurrency platforms to allow users to transfer their crypto assets

(such transferring customers, the “Users”) and (a) earn rewards on such crypto assets and/or (b) take out loans using such transferred crypto assets as collateral.

9. On July 13, 2022, Celsius and certain of its affiliates and subsidiaries (the “Celsius Debtors”) filed voluntary petitions seeking relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York (the “Celsius Bankruptcy”). *See Declaration of Holden Bixler in Support of Motion of Celsius Network LLC Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (ii) and Granting Relief to File Late Proof of Claims Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1)* (hereinafter the “Bixler Decl.”) at ¶ 6. The Celsius Bankruptcy cases are being jointly administered for procedural purposes only. The Celsius Debtors continue to operate their businesses and manage their property as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Celsius Bankruptcy cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b). Celsius retained Alvarez & Marsal North America, LLC (“A&M”) to serve as its financial advisor in connection with its chapter 11 case. *Id.* at ¶¶ 1–2.

C. The Voyager Bar Date Passed While Celsius Was Still Gathering and Organizing Information Necessary for its Own Bankruptcy

10. In connection with its chapter 11 proceedings, Celsius prepared its requisite schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases (collectively, the “Schedules”) and statements of financial affairs (the “Statements”). *Bixler Decl.* at ¶ 6. To do so, Celsius was required to compile information from books, records, and documents relating to hundreds of thousands of claims, assets, and contracts. *Id.* The collection of this necessary information required a significant expenditure of time and effort on the part of Celsius, its employees, and its advisors including

A&M. *Id.* The preparation of the Schedules and Statements in the Celsius case was uniquely challenging, including because Celsius filed one of the first crypto bankruptcies, and there is a lack of precedent. *Id.*

11. The work done to gather the information began prior to the Petition Date and continued until the ultimate filing of the Schedules and Statements. *Id.* at ¶ 7.

12. On July 14, 2022, Celsius sought an extension of time to file its Schedules and Statements. *Id.* at ¶ 8. The bankruptcy court granted that motion. *Id.* Thereafter, Celsius and A&M continued to identify, gather, analyze, and organize the information required to prepare the Schedules and Statements. *Id.* This was an iterative process during which Celsius repeatedly produced revised data sets for A&M to review and analyze. *Id.*

13. During this time, Celsius compiled information from books, records, and documents relating to the claims of hundreds of thousands of creditors, many of whom were Celsius customers, as well as Celsius' many assets and contracts. *Id.* at ¶ 9. That voluminous information was spread across various locations within Celsius' international organization. *Id.* Celsius personnel devoted considerable time to locating and gathering the materials, a task made even more challenging by the substantial number of other important activities required by the commencement of the chapter 11 cases, the limited number of employees available to collect the necessary information, the competing demands upon such employees, and the time and attention that Celsius had to devote to the restructuring process. Ferraro Decl. at ¶ 10.

14. Because of the complexity of the records and the outstanding motions related to the sealing of personally identifiable information, Celsius requested two additional extensions for filing its Schedules and Statements, the first on August 11, 2022 and the second on September 16,

2022. Bixler Decl. at ¶ 10. The bankruptcy court overseeing Celsius’ bankruptcy granted both extensions. *Id.*

15. On October 5, 2022, two days after the Voyager bar date passed, Celsius filed its Schedules and Statements totaling over 30,000 pages. *Id.* at ¶ 11. Celsius’ statement of transfers occurring in the 90 days prior to the Petition Date alone contained more than **three million rows** of data. *Id.*

D. Celsius Identifies Potential Claim, Meets and Confers with Voyager

16. On November 2, 2022, four weeks after the filing of the Schedules and Statements, A&M was asked about Voyager’s withdrawals of crypto assets in the 90 days prior to the filing of Celsius’ chapter 11 bankruptcy petition. *Id.* at ¶ 13. The Schedules and Statements indicated that Voyager Digital maintained two accounts with Celsius, both of which included an account in the earn (“Earn”) program and a withhold account (“Withhold”), to which Voyager had transferred a significant amount of crypto currencies. *Id.*

17. Through the Earn program, Celsius offers rewards to its Users who transfer their crypto assets to Celsius. *Declaration of Christopher Ferraro, Interim Chief Executive Officer, Chief Restructuring Officer, and Chief Financial Officer of the Debtors, in Support of the Debtors’ Motion Regarding Ownership of Earn Assets and the Sale of Stablecoin* [No. 22-10964, Docket No. 1326] at ¶ 11. Users in the Earn program grant Celsius all rights and title to the crypto assets transferred into the program. *Id.* at ¶ 21. Over time, the User’s rewards are credited in the User’s Celsius accounts. *Id.* at ¶ 13. A Withhold account, on the other hand, is an account that keeps transfers of assets not supported by the Celsius platform distinct from supported digital asset transfers. *Declaration of Oren Blonstein, Head of Innovation and Chief Compliance Officer of Celsius Network Limited, With Respect to Certain Phase I Issues Pursuant to the Joint Stipulation and Agreed Scheduling Order by and Among the Debtors, the Committee, and the Ad Hoc Groups*

with Respect to the Custody and Withhold Issues [No. 22-10964, Docket No. 1192] at ¶¶ 5–7. Assets in Withhold accounts are not eligible for the Earn program. *Id.* at ¶ 6. Critically, parties to the Celsius bankruptcy proceedings dispute whether assets held in various Celsius accounts and programs, including Earn program accounts and Withhold accounts, are property of the Celsius Debtors’ estate. *See Debtors’ Responsive Brief on Phase I Custody and Withhold Issues* [No. 22-10964, Docket No. 1567]. Judge Martin Glenn has already been asked to determine whether Withhold assets transferred from the Earn program are estate property. *Id.*

18. Relevant to this case, in the 90 days prior to Celsius’ bankruptcy, Voyager made multiple transfers of crypto assets from its Earn program accounts to its Withhold accounts and then withdrew most of those crypto assets from its Withhold accounts. Bixler Decl. at ¶¶ 14–15. Specifically, on May 5, 2022, Voyager transferred \$474,160.69 worth of cryptocurrency from Earn program accounts to Withhold accounts. *Id.* Later, on May 11, 2022, Voyager transferred \$3,774,632.91 worth of cryptocurrency from Earn program accounts to Withhold accounts. *Id.* On May 25, 2022, Voyager transferred \$3,451,881.41 worth of cryptocurrency from Earn program accounts to Withhold accounts. *Id.* And between May 11, 2022 and June 6, 2022, Voyager withdrew \$5,897,922.02 worth of cryptocurrency from Withhold accounts. *Id.*

19. Celsius believes that the \$7,700,675.01 worth of transfers from Voyager’s accounts in the Earn program to the accounts in the Withhold program are likely subject to preference claims by Celsius under section 547 of the Bankruptcy Code. Other withdrawals and transfers may also be subject to challenge.

20. Because Celsius’ bankruptcy case is still at a relatively early stage, Celsius has not yet engaged in a process to identify all potential preferential transactions that occurred in the relevant period. *Id.* at ¶ 12. This is consistent with the normal cadence of complex traditional

chapter 11 cases in which a fulsome analysis to identify preference claims does not typically commence until longer after the filing of the Schedules and Statements. *Id.*

21. On or around November 5, 2022, Celsius asked Akin Gump to address the potential Voyager preferences as conflicts counsel. *Declaration of Mitchell Hurley in Support of Motion of Celsius Network LLC Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (ii) and Granting Relief to File Late Proof of Claims Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1)* (hereinafter the “Hurley Decl.”) at ¶ 4. Thereafter, Akin Gump performed a preliminary investigation on an expedited basis into the relationship between Voyager and Celsius and discovered a potential preference claim that is the basis of the Motion. *Id.*

22. On November 15, 2022 Akin Gump contacted counsel to Voyager concerning certain of the relief requested in this Motion. *Id.* at ¶ 5. After additional conversations with Celsius’ counsel, Akin Gump provided a formal letter requesting that Voyager consent to the relief Celsius now seeks, but without the time or expense associated with formal motion practice. *Id.* Celsius continued to meet and confer with Voyager’s counsel after providing the letter, but to date the parties have been unable to reach agreement concerning the relief Celsius seeks. *Id.* In the interests of time, Celsius has therefore filed the Motion, though Celsius remains hopeful that a consensual resolution is possible. *Id.*

RELIEF REQUESTED AND BASIS FOR RELIEF

23. Celsius respectfully requests that the Court enter an Order (i) lifting the automatic stay in this chapter 11 case to permit Celsius to commence an adversary proceeding in the Celsius chapter 11 case in order to pursue a preference action against Voyager and (ii) extending, *nunc pro tunc*, Celsius’ time to file a proof of claim in this action despite passage of the bar date.

I. The Automatic Stay Should Be Lifted to Allow Celsius to Bring an Action for Recovery of Preferential Transfers Against Voyager Pursuant to Section 547 of the Bankruptcy Code

24. Under the Bankruptcy Code, the filing of a bankruptcy petition automatically stays “the commencement or continuation . . . of a judicial . . . action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy].” 11 U.S.C. § 362(a)(1). The Bankruptcy Code also provides for the automatic stay to be lifted under certain circumstances. Section 362(d)(1) provides that “[o]n request of a party in interest . . . the court shall grant relief from the automatic stay . . . by terminating, annulling, modifying, or conditioning such stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1).

25. The Bankruptcy Code does not define the phrase “for cause,” but courts recognize it as “a broad and flexible concept that must be determined on a case-by-case basis.” *In re Project Orange Assocs., LLC*, 432 B.R. 89, 103 (Bankr. S.D.N.Y. 2010) (quoting *In re Brown*, 311 B.R. 409, 412–13 (E.D. Pa. 2004)); *see also Eastern Refractories Co. v. Forty Eight Insulations*, 157 F.3d 169, 172 (2d Cir. 1998) (“[B]ankruptcy courts have the plastic powers to modify or condition an automatic stay so as to fashion the appropriate scope of relief.”); *In re Pittsford Polo Club, Inc.*, 188 B.R. 339, 344 (Bankr. W.D.N.Y. 1995) (bankruptcy courts are empowered with “broad discretion to fashion relief from the automatic stay”). Indeed, “[a]llowing a matter to proceed in another forum may constitute cause.” *In re Xenon Anesthesia of Texas, PLLC*, 510 B.R. 106, 112 (S.D. Tex. 2014).

26. And notably, at least one court in this Circuit has used those broad, elastic powers to allow modification of an automatic stay *in order to allow prosecution of an adversary proceeding between two debtors from two different bankruptcies*—which is exactly the fact pattern that gives rise to this motion. *See, e.g., In re Shared Techs. Cellular, Inc.*, 293 B.R. 89 (D.

Conn. 2003) (finding bankruptcy court's modification of automatic stay to permit debtor in separate bankruptcy to prosecute preference claims in its own bankruptcy case an appropriate exercise of the court's broad powers under section 362).

A. The *Sonnax* Factors for Granting a Motion to Lift the Automatic Stay

27. In determining whether to modify or lift an automatic stay to allow litigation against a debtor to proceed in another forum, courts in this Circuit typically consider the twelve factors set out by the Second Circuit in *In re Sonnax Indus.*, 907 F.2d 1280 (2d Cir. 1990). Those factors are:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms.

Id. at 1286. A court need only apply the factors that are relevant to the particular case, and does not need to give each factor equal weight. *In re Project Orange Assocs., LLC*, 432 B.R. at 104.

28. In *In re Shared Techs*, the United States Bankruptcy Court for the District of Connecticut analyzed whether the stay should be lifted in order to allow prosecution of an adversary proceeding between two debtors from two different bankruptcies. The court explained that lifting the stay was justified because “[w]ithout a stay modification, no further action on the pending litigation is possible,” and then lifted the stay for the limited purpose of allowing the movant to proceed in seeking a judgment to recover preferential transfers in an adversary proceeding filed in its own bankruptcy action—which is exactly what Celsius seeks here. *In re Shared Techs*, 293 B.R at 94..

B. The Applicable *Sonnax* Factors Justify Lifting the Automatic Stay

29. Here, the Court should grant Celsius’ motion because the applicable *Sonnax* factors weigh in favor of lifting the automatic stay and none of the factors militate against it. Specifically, (i) Celsius’ preference claims against Voyager are most efficiently litigated in the Celsius action, where legal and factual issues materially similar or identical to issues that will be raised in connection with the Voyager already must be considered and resolved (Factor 10); (ii) the balance of harms favors lifting the stay because Celsius has a preference claim against Voyager, the resolution of which is necessary for the proper adjudication of both Voyager and Celsius’ bankruptcy cases (Factor 12); and (iii) because these are discrete claims not connected to a larger issue in Voyager’s bankruptcy, there will be no prejudice to other creditors or the broader Voyager restructuring (Factor 7)—whereas leaving the stay in place will continually prejudice Celsius.

Factor 10. Litigation in the Celsius Bankruptcy Serves the Interests of Judicial Economy and the Expeditious and Economical Resolution of Litigation:

30. First, resolving the preference claim in the Celsius Bankruptcy rather than the Voyager Bankruptcy will serve the interests of judicial economy and the expeditious resolution of litigation because one court will remain the expert tasked with resolving critical issues arising in Celsius preference claims, including issues based on substantially similar facts. *In re Project Orange Assocs., LLC*, 432 B.R. at 109 (explaining that factor 10 weighed in favor of lifting the stay and allowing litigation to proceed in a different court because the agreements at issue were “complicated, long-term arrangements” that the other court was “quite familiar” with); *see also In re Sukhu*, Case No. 17-11890, 2022 WL 610310, at *7 (S.D.N.Y. Mar. 1, 2022) (“Reviewing the relevant *Sonnax* factors, Judicial Economy suggests that this matter is best settled by the Court in which the litigation was initiated.”).

31. Transfers by Voyager made from Earn accounts to Withhold accounts in the 90 days before Celsius' petition date, or alternatively, based on Voyager's withdrawals from Withhold Accounts in the 90 days before Celsius' petition date may constitute avoidable preferences. The answer to that question will turn in part on the Celsius bankruptcy court's determination as to whether assets held in the Earn and Withhold accounts are estate property, subjects the Celsius court will soon consider and determine. The Celsius bankruptcy court will then have to consider whether transfers out of certain kinds of Celsius account(s) constitute preferential transfers. Not only will it be more *efficient* for one court to familiarize itself sufficiently with issues concerning the Celsius platform to determine these questions, it also will reduce the risk of inconsistency for one court to make determinations about hundreds or perhaps thousands of arguably similar preference claims relating to transfers on and out of the Celsius platform.

32. Additionally, Voyager may seek to assert a claim in the Celsius Bankruptcy with respect to crypto assets in Earn and/or Withhold accounts. That in turn may result in disputes such as disallowance litigation under section 502(d), and thus the questions discussed above, including whether Voyager is in receipt of an avoidable preference under section 547 may have to be determined in the Celsius Bankruptcy in any event. *See In re Rochester Drug Coop., Inc.*, 620 B.R. 699, 705 (Bankr. W.D.N.Y. 2020) ("Judicial economy is served by allowing Echo to resolve its setoff claim for returned goods credit . . . in a single proceeding.").

33. Allowing the preference action against the Debtor to proceed in the Celsius Bankruptcy, therefore, will avoid multiple courts having to adjudicate the same issues and promote judicial economy.

Factor 12. The Stay Prejudices Celsius and the Balance of Harms Favors Lifting it:

34. Second, the balance of harms favors lifting the stay because Celsius has a preference claim that must be resolved. The stay will continue to prejudice Celsius if it remains in place because it will prevent Celsius from pursuing preference claims against Voyager totaling at least approximately \$7.7 million in its own bankruptcy case. *See In re Wiley*, 288 B.R. 818, 822 (B.A.P. 8th Cir. 2003) (“The mere filing of a petition in bankruptcy cannot, in and of itself, erase a plaintiff’s claim, its opportunity to litigate, or the fact that the debtor may be liable to the plaintiff in some amount.”).

35. Under section 547(b)(4)(A) of the Bankruptcy Code, a “trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses . . . avoid any transfer of an interest of the debtor in property. . . (4) made—(A) on or within 90 days before the date of the filing of the petition,” as long as “those interests are not perfected security interests.” *In the Matter of: Sterling United, Inc.*, 674 F. App’x 19, 20 (2d Cir. 2016) (citing 11 U.S.C §§ 547(b)(4)(a), 547(c)(3)).

36. Here, Voyager transferred coins from Earn accounts to Withhold accounts within 90 days of Celsius filing its petition and then withdrew many of those coins from Withhold accounts within 90 days of Celsius filing its petition. Celsius seeks to avoid certain of those transfers as preferential under section 547. Celsius clearly will be prejudiced if it is not permitted to pursue its preference claims against Voyager in its own bankruptcy. *See Krichevsky v. U.S. Bank, N.A.*, 20-CV-2343 (AMD), 2021 WL 9244084 at n.5 (E.D.N.Y. Mar. 22, 2021) (“I find that these factors favor modification of the automatic stay.... In particular, ‘lifting the stay on this limited basis enables [U.S. Bank] to proceed . . . to resolve issues with the property—in which the [other court] has expertise—and furthers the interests of judicial economy.’”).

37. By contrast, Voyager will not experience harm if Celsius is allowed to pursue the preference action in the Celsius Bankruptcy. The alternative would be proceeding by way of proof of claim in the Voyager Bankruptcy, which would be an inefficient way of resolving the merits of the underlying preference action. Indeed, Voyager might even gain an advantage if the preference action proceeds alongside actions brought by Celsius against other preference defendants facing arguably similar claims arising out of arguably similar circumstances.

Factor 7. Litigation in the Celsius Bankruptcy Will Not Prejudice Other Creditors:

38. Finally, Celsius' contemplated preference action against Voyager is a discrete claim that lacks connection to any larger issue in the Voyager Bankruptcy. The preference litigation in the Celsius Bankruptcy does not prejudice the interests of Debtor's other creditors because Celsius' preference claims are unique to Celsius and not available to all unsecured creditors. *See In re Rochester Drug Cooperative, Inc.*, 620 B.R. 699, 705 (Bankr. W.D.N.Y. 2020) (finding that factors 7, 10, and 12, weigh most heavily in favor of granting stay relief for party to assert a counterclaim for setoff against the debtor because the alleged setoff claim was not a claim available to all unsecured creditors). No other Voyager creditor can claw back Celsius coins stored on the Celsius platform. And whether Voyager or Celsius has a right to these coins is a matter to be resolved solely between Celsius and Voyager and should be resolved in the Celsius Bankruptcy, for all the reasons stated herein.

39. Thus, there is cause for the automatic stay to be lifted or modified to permit Celsius to assert a preference action against Voyager in the Celsius Bankruptcy.

II. The Court Should Extend Celsius' Time to File a Claim Under Bankruptcy Rules 3003(c) and 9006(b)(1)

40. To ensure that Celsius can recover in the Voyager Bankruptcy any judgment received based on a preference action in the Celsius Bankruptcy, Celsius also asks the Court for

an extension of time to file a proof of claim. Celsius is entitled to such relief primarily because it (i) did not receive notice of the bar date in the Voyager Bankruptcy and (ii) was in the midst of its own massive bankruptcy proceeding when the bar date passed, both of which justify a finding of “excusable neglect” to allow late-filed proof of claims.

A. The “Excusable Neglect” Standard

41. Bankruptcy Rule 9006(b)(1) authorizes a bankruptcy court to accept late-filed claims where the failure to act is a result of “excusable neglect,” and contemplates that courts are permitted, where appropriate, to accept late filings. Fed. R. Bankr. Proc. 9006(b)(1).

42. The leading case addressing the “excusable neglect” standard is *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al.*, 507 U.S. 380 (1993). According to the Supreme Court, “excusable neglect” is an elastic concept and includes inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party’s control. *Pioneer*, 507 U.S. at 388, 391. A determination of “excusable neglect” is an equitable consideration where the Court must take into account all relevant circumstances. *Id.* at 395; *see also In re AMR Corp.*, 492 B.R. 660, 666 (Bankr. S.D.N.Y. 2013).

43. The Supreme Court, noting that one of the aims of chapter 11 of the Bankruptcy Code is to “avoid forfeiture by creditors,” determined that there were four key factors to analyze when evaluating whether a claim may be accepted after the bar date as a result of “excusable neglect”:

- (i) whether granting the delay will prejudice the debtor;
- (ii) the length of the delay and its impact on efficient court administration;
- (iii) whether the delay was beyond the reasonable control of the person whose duty it was to perform; and
- (iii) whether the creditor acted in good faith.

Pioneer, 507 U.S. at 385

44. Importantly, the determination of whether “excusable neglect” is present is factual in nature and falls within the discretion of the bankruptcy court. *See In re AWMC, Inc.*, 109 B.R. 210, 212 (Bankr. N.D. Tex. 1989) (determination is “fact specific”).

B. An Extension of Celsius’ Deadline to File Proof of Claims is Warranted

45. Each of the four key factors set forth by the Supreme Court for permitting late-filed claims is present here. First, the Debtors would not be prejudiced by the claim being deemed timely filed or the granting of an extension of the bar date. Second, the delay in the filing of the claim was reasonable under the circumstances and will not have a detrimental effect on the efficiency of court administration. Third, the reason for the delay was based on excusable neglect. And fourth, Celsius acted in good faith to file proof of its claim as soon as possible.

(i) *Prejudice to the Debtors*

46. First, allowing a late-filed claim will not prejudice the Debtors because Voyager is still in the preliminary stages of its bankruptcy and no plan has been confirmed. *See In re Herman’s Sporting Goods, Inc.*, 166 B.R. 581, 584 (Bankr. D.N.J. 1994) (“The absence of a confirmed plan of reorganization indicates a lack of prejudice to the debtor.”); *Matter of Papp Int’l, Inc.*, 189 B.R. 944 (Bankr. D. Neb. 1995) (“Several courts have concluded the lack of a confirmed plan indicates a lack of prejudice to the debtor”); *see also In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995) (stating in connection with finding excusable neglect, “although the principal constituents have negotiated and published a plan, it has not been confirmed.”).

47. Second, the claim itself would be *de minimus* relative to a total unsecured claims pool of \$1.85 billion. *See Notice of Filing of First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant*

to Chapter 11 of the Bankruptcy Code [No. 22-10943, Docket No. 591]. Allowing an additional claim for approximately \$7.7 million relative to an estimated total claims pool of that size will have very little, if any, effect on this proceeding.

48. Moreover, on November 18, 2022, Voyager gave notice of an extension of the bar date to December 23, 2022, for creditors with a claim arising from an amendment to the schedule of assets and liabilities for Debtor Voyager Digital, LLC. *See Notice of (I) Filing of Amendment to Schedule of Assets and Liabilities for Voyager Digital, LLC and (II) Deadline Requiring Submission of Proofs of Claim on or Before December 23, 2022 and Related Procedures for Submitting Proofs of Claim in the Above-Captioned Chapter 11 Cases* [No. 22-10943, Docket No. 666]. In light of the new deadline for a significant number of parties, it is unlikely that allowing one additional party (Celsius) to file proof of claims after the original October 3 bar date would prejudice the Debtors in any meaningful way.

49. Finally, the preference claim Celsius seeks to file and the circumstances surrounding it are unique. It is highly unlikely that another Voyager creditor will discover a preference claim based on its own large bankruptcy action being filed at essentially the same time as the Voyager bar date. Therefore, it is unlikely that granting Celsius the relief it seeks will result in a cascade of similar such claims, thereby prejudicing the Debtors.

(ii) *Length of Delay*

50. “There is no bright-line rule governing when the lateness of a claim renders it too late.” *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 121 (Bankr. S.D.N.Y. 2010), *aff’d* sub nom. *CVI GVF (Lux) Master S.a.r.l. v. Lehman Bros. Holdings Inc.*, 445 B.R. 137 (S.D.N.Y. 2011). “[T]he lateness of a claim must be considered in the context of the proceeding as a whole.” *In re Enron Corp.*, 419 F.3d 115, 128 (2d Cir. 2005). And, notably, “a claim filed six months late

will not be disruptive at all—if, for example, the proceeding has come to a temporary halt for other reasons.” *Id.*

51. Here, Celsius worked diligently to gather and organize the information required in its statements upon filing its bankruptcy petition and that work continued until the morning of October 5, 2022, when Celsius filed its Schedules and Statements. Bixler Decl. at ¶¶ 5–14. As soon as Celsius became aware of its claim on November 5, 2022, it began the process of preparing to file a claim, including the retention of conflicts counsel and preparation of this Motion. Hurley Decl. at ¶¶ 4–12. This delay is therefore reasonable.

52. Furthermore, any claim in respect of the preference action will not have any meaningful effect on the administration of Voyager’s chapter 11 case.

(iii) *Reason for Delay*

53. Any delay on the part of Celsius in not timely filing a preference claim is excusable. Excusable neglect is “not limited strictly to omissions caused by circumstances beyond the control of the movant.” *Pioneer*, 507 U.S. at 392. “Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” *Id.* at 388. Further, when “a creditor is not given reasonable notice of the bankruptcy proceeding and the relevant bar dates, its claim cannot be constitutionally discharged.” *In re AMR Corp.*, 492 B.R. at 663 (quoting *Grant v. U.S. Home Corp. (In re U.S. Home Corp.)*, 223 B.R. 654, 658 (Bankr. S.D.N.Y. 1998)). Likewise, “[i]nadequate notice is a defect which precludes discharge of a claim in bankruptcy.” *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d. Cir. 1995). This is because “[t]he constitutional standard for due process requires that known creditors in a bankruptcy case receive actual notice of the bar date.” *In re AMR Corp.*, 492 B.R. at 663 (citing *City of New York v. N.Y., N.H. & H.R. Co.*, 344 U.S. 293, 296–97 (1953)). “In Chapter 11, therefore, a known

creditor must receive proper, adequate notice before its claim is barred forever.” *Id.* (citing *Best Prods. Co., Inc.*, 140 B.R. at 357); *see also In re R.H. Macy & Co., Inc.*, 161 B.R. 355, 359 (Bankr. S.D.N.Y. 1993) (“Known creditors . . . must be afforded notice ‘reasonably calculated, under all the circumstances, to apprise’ them of the pendency of the bar date.”). And a creditor who does *not receive* actual notice of the bar date may establish excusable neglect on that ground. *In re Thomson McKinnon Securities, Inc.*, 159 B.R. 146, 148 (Bankr. S.D. N.Y. 1993).

54. The fact that Celsius never received notice of the Voyager bar date, therefore, is sufficient to establish excusable neglect. Ferraro Decl. at ¶¶ 4–9. But even if Celsius *had* received notice, it would still have a strong claim for excusable neglect because its delay also was the result of being consumed with its own bankruptcy case and in traditional complex chapter 11 filings, preference claims are often not analyzed before filing Schedules and Statements. *See* Bixler Decl. at ¶¶ 5–14. As explained *supra* at ¶ 13, Celsius worked diligently with limited resources to gather and organize the information required for its Schedules and Statements and did not have the resources to undertake an extensive analysis of all potential preference claims before filing its Schedules and Statements—indeed, records of the transactions on the Celsius platform in the 90 days before filing of the bankruptcy petition *alone* accounted for millions of rows of data. *Id.* at ¶ 11. Celsius has not yet conducted a comprehensive preference analysis and only recently began a limited, preliminary review of potential preference claims associated with only the GK8 entities in mid-December 2022, *Id.* at ¶ 12, but has nevertheless already identified its particular preference claim against Voyager. Thus, under the circumstances, it has established excusable neglect.

(iv) Good Faith

55. Finally, Celsius acted in good faith. Celsius began exploring its claims against Voyager as soon as it was made aware of the transfers—referring the matter to conflicts counsel, investigating the relevant transactions, consulting with counsel for Voyager in an effort to save

both estates the expense of motion practice, and ultimately filing this motion promptly—and prioritized the preference claims against Voyager long before any others. *Id.* at ¶¶13–18. Through no fault of its own, Celsius did not receive notice of the Voyager bar date. *Id.*

56. Without receiving notice of the bar date, Celsius could not have been expected to prioritize that date above deadlines in its own bankruptcy. As explained in detail above, Celsius’ own bankruptcy required it to process a massive amount of information in a short amount of time. *See supra* at ¶ 13. Because (i) preference claims are usually analyzed after Schedules and Statements are filed in traditional chapter 11 cases and (ii) Celsius did not receive notice of the Voyager bar date, Celsius focused its resources on more pressing deadlines and ultimately filed its Schedules and Statements on October 5, 2022—two days after the Voyager bar date of October 3, 2022. *See supra* at ¶¶ 13–15.

57. The decision to focus on preparing Schedules and Statements was made in good faith based on the need to comply with the relevant bankruptcy rules.

58. Accordingly, by virtue of Celsius’ good-faith efforts to timely file the claims, the relatively short delay in seeking Court permission to file the claim, the absence of prejudice to the Debtors’ estates and the absence of a negative impact on the efficiency of court administration, Celsius respectively submits that, pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1), the Court should conclude that excusable neglect is present and extend, nunc pro tunc, Celsius’ time to file a proof of claim to within 14 days of a decision granting such relief.

NOTICE

59. Notice of this Motion has been provided to the Debtors, the Office of the U.S. Trustee, and all other parties entitled to notice pursuant to Bankruptcy Rule 2002. Celsius submits that such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

60. No prior request for the relief sought in this Motion has been made by Celsius to this or any other court.

CONCLUSION

WHEREFORE, Celsius respectfully request that the Court (i) enter an Order (a) lifting the automatic stay in this chapter 11 case to permit Celsius to commence an adversary proceeding in Celsius' chapter 11 case in order to pursue a preference action against Voyager and (b) granting leave under Bankruptcy Rules 3003(c) and 9006(b)(1) extending, *nunc pro tunc*, Celsius' time to file a proof of claim to within 14 days of a decision granting such relief and (ii) grant Celsius such other and further relief as the Court deems just, equitable, and proper.

Dated: New York, New York
December 23, 2022

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Hearing Date: January 24, 2023 at 11:00 a.m.
(prevailing Eastern Time)

Exhibit E

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*Counsel to the Official Committee of Unsecured
Creditors*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> ,)	
)	Case No. 22-10943 (MEW)
Debtors. ¹)	(Jointly Administered)
)	

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO CELSIUS NETWORK LLC'S MOTION SEEKING AN ORDER (I) LIFTING
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(D)(1) AND
BANKRUPTCY RULE 4001 AND (II) GRANTING LEAVE TO FILE LATE PROOF
OF CLAIM PURSUANT TO BANKRUPTCY RULES 3003(C) AND 9006(B)(1)²**

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases of the above-captioned debtors (collectively, the "Debtors" or "Voyager") hereby objects (the "Objection") to the Motion³ filed by Celsius Network LLC ("Celsius") seeking an order (1) lifting the automatic stay to allow commencement of an adversary proceeding to recover alleged preferential transfers and (2) extending the time to file a proof of claim. In support of the Objection, the Committee respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Voyager Digital Holdings, Inc.'s and Voyager Digital Ltd.'s principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003. Voyager Digital, LLC's principal place of business is 701 S. Miami Ave, 8th Floor, Miami, FL 33131.

² Celsius's motion was originally filed at Docket No. 727 (the "Motion"). Celsius subsequently filed an "updated" motion at Docket No. 789, but the only change was to include the new objection deadline of January 17, 2023.

³ Unless otherwise defined herein, capitalized terms have the same meanings as in the Motion.

PRELIMINARY STATEMENT

1. Celsius's request for special treatment should be denied. The bar date applies to all creditors, and Celsius has no excuse for filing a late proof of claim. Celsius also provides no compelling reason for why it should be able to front-run other creditors by lifting the automatic stay. Put simply, the Motion provides no basis to depart from the applicable bar dates and Bankruptcy Rules. The Motion should be denied in its entirety.

2. Voyager and Celsius are both chapter 11 debtors in the Southern District of New York. On July 5, 2022, Voyager commenced its chapter 11 case (the "Voyager Case"),⁴ and on July 13, 2022, Celsius commenced its chapter 11 case (the "Celsius Case").⁵ Voyager filed bankruptcy amidst extreme turmoil in the cryptocurrency industry. Indeed, the June 2022 beginning of "crypto winter" saw many market participants struggle and ultimately, fail. This "cryptopocalypse" spread rapidly through the mainstream news, as many retail customers found themselves unable to access their cryptocurrency because of withdrawal "freezes" on crypto platforms. Voyager was the first of these companies to commence chapter 11 proceedings, and Celsius filed only eight days later. The details of this sudden collapse across the industry, including Voyager's Case, are set forth in detail in the first day declaration (the "Celsius First Day Declaration") filed by Celsius's former Chief Executive Officer, Alex Mashinsky.⁶

3. On August 3, 2022, this Court established October 3, 2022 as the bar date (the "Bar Date") in the Voyager Case.⁷ On September 23, 2022, Voyager mailed the notice of Bar

⁴ The Voyager Case is jointly administered under the case captioned *In re Voyager Digital Holdings, Inc.*, et al., Case No. 22-10943 (MEW) (Bankr. S.D.N.Y.).

⁵ The Celsius Case is jointly administered under the case captioned *In re Celsius Network LLC*, et al., Case No. 22-10964 (MG) (Bankr. S.D.N.Y.). Filings in the Celsius case are cited as "CN Docket No. #."

⁶ CN Docket No. 23.

⁷ See Docket No. 218 (the "Bar Date Order").

Date to Celsius,⁸ and on August 11, 2022 published the notice of Bar Date in the *New York Times* and the *Financial Times*.⁹ The notice of Bar Date, like many of the filings in the Voyager Case, was widely publicized by media reports and on social media.¹⁰ Voyager even provided notice on its own website describing the “claims process for your crypto” and making clear that “you will need to submit [a] proof of claim on or before the Bar Date of October 3, 2022, at 5:00 PM (EST).”¹¹ The Committee also published the Bar Date and clear instructions on its own Twitter account.¹²

4. Celsius has also been represented by sophisticated bankruptcy counsel and advisors (many of which also represent Voyager). Despite all of this, Celsius failed to file a timely proof of claim.

5. Celsius is now seeking authority to file a \$7.7 million preference claim months after the Bar Date has passed. However, Celsius has not proffered any compelling excuse for missing the Bar Date. That is because no excuse exists. Celsius not only had actual and

⁸ Exhibit A to Docket No. 459 (averring that notice was sent to “Celsius” at “35 Great St. Helen’s, London, UK EC3A 6AP”). Celsius concedes this fact. Ferraro Decl. at ¶ 6 (“Voyager attempted to provide notice of the bar date in its chapter 11 case to Celsius UK”). Celsius alleges, however, that the address is out of date. *Id.* at ¶ 7 (“35 Great St. Helen’s, London, United Kingdom” is “an out of date address for a space that Celsius UK no longer occupies”).

⁹ Docket Nos. 271 and 272.

¹⁰ Voyager (@investvoyager), Twitter (Aug. 26, 2022, 6:19 PM), <https://twitter.com/investvoyager/status/1563290000187219969> (providing a link to additional information about the claims process, including the Bar Date); JD Supra, *Voyager Creditors—Deadline Set for Filing Bankruptcy Proofs of Claim*, Aug. 11, 2022, <https://www.jdsupra.com/legalnews/voyager-creditors-deadline-set-for-2824111/> (stating that the proof of claim “deadline is 5:00 p.m. ET on October 3, 2022”); Emily Tonelli, *Crypto Exchange FTX Wins Bid to Buy Out Bankrupt Voyager for \$1.4B*, Sept. 27, 2022, <https://decrypt.co/110601/crypto-exchange-ftx-wins-bid-buy-out-bankrupt-voyager-1-4b> (stating that the proof of claim deadline is October 3); Christian Nwobodo, *Bankrupt Crypto Lender Voyager Set to Auction Off its Assets on Sept. 13*, Sept. 7, 2022, <https://cryptoslate.com/bankrupt-crypto-lender-voyager-set-to-auction-off-its-assets-on-sept-13/> (same).

¹¹ The Voyager Team, *Claims Process for Your Crypto: Next Steps*, Aug. 24, 2022, <https://www.investvoyager.com/blog/claims-process-crypto-next-steps/>.

¹² Voyager Official Committee of Unsecured Creditors (@VoyagerUCC), Twitter (August 31, 2022, 5:07 PM), <https://twitter.com/VoyagerUCC/status/1565083929413140480>.

constructive notice of the Bar Date, but it also knew about the allegedly preferential transfers well in advance of the deadline. In August, more than one month before the Bar Date, Celsius made public statements about Voyager withdrawing funds from Celsius's platform prepetition, but failed to take any action to preserve its claim.

6. Celsius admits it filed a late proof of claim, but argues that its neglect should be excused. Celsius's neglect is not excusable. And, because Celsius's claim is time-barred, its request to obtain relief from the automatic stay is futile.¹³ *See, e.g., In re GGC, LLC*, 329 B.R. 36, 39 (Bankr. W.D. Pa. 2005) ("stay relief should not be granted to accomplish a futile act, the Court is constrained to deny [the] instant motion for relief from the automatic stay."); *In re Denman*, 513 B.R. 720, 727 (Bankr. W.D. Tenn. 2014) (denying stay relief when the underlying act—exercising invalid option rights—is futile). For these reasons and the reasons below, the Motion should be denied.

OBJECTION

I. Celsius Fails to Establish Excusable Neglect

7. "Dates matter in bankruptcy" and, "[f]or creditors, none is more important than the 'bar date.'" *Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221, 226 (3d Cir. 2021). "It not only allows the trustee or debtor-in-possession to estimate the debtor's potential liabilities, it is also essential in formulating a viable reorganization plan. Without a final claims deadline, participants in the reorganization process would be hindered by undue caution in their negotiations and in voting on the plan." *Id.* at 232 (quoting *In re Energy Future Holdings Corp.*, 619 B.R. 99, 118 n.109 (Bankr. D. Del. 2020)). "Thus, a bar [date] does not function merely as a

¹³ Paragraph 6 of the Bar Date Order provides that any holder of a claim that fails to timely submit a proof of claim shall not be treated as a creditor with respect to such claim for purposes of participating in any distribution on account of such claim.

procedural gauntlet, but as an integral part of the reorganization process.” *In re Hooker Invs., Inc.*, 937 F.2d 833, 840 (2d Cir. 1991) (quotations and citation omitted).

8. Courts will only permit late proofs of claims in extraordinary circumstances. “[Bankruptcy Rule] 9006(b)(1) governs the filing of proofs of claim after a bar date.” *In re Motors Liquidation Co.*, 600 B.R. 482, 487–88 (Bankr. S.D.N.Y. 2019), *aff’d*, No. 19-CV-5666 (JMF), 2020 WL 3120379 (S.D.N.Y. June 12, 2020) (citing *In re Enron Corp.*, 419 F.3d 115, 121 (2d Cir. 2005)). The rule allows enlargement of the time to take an action *only* where “failure to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b)(1); *see Motors Liquidation*, 600 B.R. at 488 (quotations omitted) (“Accordingly, a proof of claim filed after the bar date will only be permitted if the failure to file before the bar date was the result of excusable neglect.”).

9. Courts evaluate whether neglect is “excusable” by applying the *Pioneer* factors, which are as follows: (1) “the danger of prejudice to others”; (2) “the length of the delay and its potential impact on proceedings”; (3) “the reason for the delay, including whether it was in the reasonable control of the movant”; and (4) “whether the movant acted in good faith.” *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 396 (1993); *see In re Tronox Inc.*, 626 B.R. 688, 698 (Bankr. S.D.N.Y. 2021) (“‘excusable neglect’ requires consideration of four factors”).

10. Courts are reluctant to allow late claims. “The Second Circuit strictly observes bar dates and has adopted what has been characterized as a ‘hard line’ in applying the *Pioneer* test.” *In re Motors Liquidation Co.*, 619 B.R. 63, 74 (Bankr. S.D.N.Y. 2020) (quoting *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 119 (Bankr. S.D.N.Y. 2010)); *In re AMR Corp.*, 492 B.R. 660, 666 (Bankr. S.D.N.Y. 2013) (“The Second Circuit has adopted a strict standard on

excusable neglect.”).¹⁴ “Critically, in the Second Circuit, ‘the equities will rarely if ever favor a party who fails to follow the clear dictates of a court rule, and . . . where the rule is entirely clear . . . a party claiming excusable neglect will, in the ordinary course, lose under the *Pioneer* test.’” *Lehman Bros. Holdings*, 433 B.R. at 119 (quoting *Enron*, 419 F.3d at 123) (alterations in original).

A. The Reason for the Delay Does Not Establish Excusable Neglect.

11. The “reason for the delay” is the key *Pioneer* factor. *See Williams v. KFC Nat’l Mgmt. Co.*, 391 F.3d 411, 415–16 (2d Cir. 2004) (“it is the third factor—the reason for delay—that predominates, and the other three are significant only in close cases.”) In addressing this factor, Celsius provides two excuses: (1) “not receiv[ing] notice of the bar date”; and (2) being unaware of its claim because of “its own massive bankruptcy proceeding.” Motion at ¶ 40.

Neither of these reasons supports a ruling that Celsius’s neglect was “excusable.”

(1) Celsius Received Notice and Had Actual Knowledge of the Bar Date

12. Celsius claims that “[t]he fact that Celsius never received notice of the Voyager bar date [] is sufficient to establish excusable neglect.” Motion at ¶ 54. That’s wrong for many reasons.

13. **First**, and most critically, Celsius had **actual knowledge** of the Bar Date. When a creditor “receive[s] actual knowledge of the Bar Date despite the fact that the notice was sent to the wrong address, or acquired actual knowledge of the Bar Date in some other manner, [the creditor] [is] not free to ignore it.” *In re Avaya Inc.*, No. 17-10089 (SMB), 2018 WL 4381524, at

¹⁴ This “strict” approach is consistent amongst courts. *See, e.g., Nicholson v. City of Warren*, 467 F.3d 525, 526 (6th Cir. 2006) (“Excusable neglect has been held to be a strict standard which is met only in extraordinary cases.”); 10 Collier on Bankruptcy ¶ 9006.06[3] (16th ed. 2022) (explaining that cases “demonstrate a reluctance on the part of the courts to be generous in determining whether the situation is one resulting from neglect that is excusable.”).

*5 (Bankr. S.D.N.Y. Sept. 12, 2018); *see also In re Queen Elizabeth Realty Corp.*, No. 13-12335 (SMB), 2017 WL 1102865, at *5 (Bankr. S.D.N.Y. Mar. 24, 2017), *aff'd*, 586 B.R. 95 (S.D.N.Y. 2018) (“a creditor who has actual knowledge of the bar date ignores it at its peril”); *In re Fairchild Aircraft Corp.*, 128 B.R. 976, 985 (Bankr. W.D. Tex. 1991) (a “creditor, like the Plaintiffs in this case, who has actual knowledge of the bar date, be it by formal notice or otherwise, certainly has the reasonable notice required”); *In re Sunland, Inc.*, 534 B.R. 793, 799 (Bankr. D.N.M. 2015) (“actual knowledge of the bar date” is “more than enough to provide due process”).

14. For example, in Kmart’s bankruptcy, a creditor (Simmons) “was not listed on any of Kmart’s schedules and never physically received notice of the Bar Date from the debtor.” *In re Kmart Corp.*, 381 F.3d 709, 717 (7th Cir. 2004). However, “it [was] undisputed that Simmons’s **attorney** had **actual knowledge** of the Original Bar Date.” *Id.* at 711 (emphasis added). The Seventh Circuit affirmed the bankruptcy court’s denial of the tardy claim because “Simmons’s counsel had actual knowledge of the Original Bar Date. And the attorney’s knowledge is chargeable to the client.” *Id.* at 717; *see also In re Linzer*, 264 B.R. 243, 248 (Bankr. E.D.N.Y. 2001) (“notice to or actual knowledge acquired by an agent is imputed to the principal” and the rule applies “to the relation of attorney and client” and “to bankruptcy cases”).

15. Kirkland & Ellis (“Kirkland”) is the lead law firm representing Celsius and Voyager. Kirkland filed the motion establishing the Bar Date in the Voyager Case.¹⁵ Celsius’s

¹⁵ Compare the lead lawyer on the bar date motion in the Voyager Case [Docket No. 98] with the lead lawyer on the application to retain Kirkland in the Celsius Case [CN Docket No. 360], the motions for extension of time to file schedules and statements of financial affairs in the Celsius Case [CN Docket Nos. 8, 431, 833], and Celsius’ *Global Notes and Statement of Limitations, Methodology and Disclaimers Regarding the Debtors’ Schedules of Assets and Liabilities and Statement of Financial Affairs* [CN Docket No. 973], which includes a schedule of alleged preferential transfers.

and Voyager's Claims and Noticing Agent and Administrative Advisor is Stretto, Inc.

("Stretto"). Stretto served the notice of Bar Date on Celsius and published the notice of Bar Date in the *New York Times* and the *Financial Times* for Voyager, and assisted Celsius in preparing its Schedules and Statements of Financial Affairs.¹⁶

16. Moreover, the Voyager Case also has been highly publicized on both social media and media reports, including with respect to the Bar Date.¹⁷ Voyager was the largest cryptocurrency bankruptcy ever filed in the United States when the case was commenced, and the case presides in the same court as the Celsius Case. There is no question that Celsius had actual knowledge of the Voyager Case and the accompanying Bar Date. Celsius is a sophisticated party whose own advisors requested the Bar Date at issue – they cannot now cry foul for their failure to comply.¹⁸

17. **Second**, Celsius received actual notice by mail of the Bar Date. Celsius believes its neglect is excusable because it did not "**receive** notice of the bar date." Motion at ¶ 40 (emphasis added). But "due process does not require that the interested party actually receive the

¹⁶ See Docket Nos. 67 and 241 (authorizing the retention of Stretto as Claims and Noticing Agent and Administrative Advisor); see CN Docket Nos. 54 and 841 (same).

¹⁷ See Voyager (@investvoyager), Twitter (Aug. 26, 2022, 6:19 PM), <https://twitter.com/investvoyager/status/1563290000187219969> (providing a link to additional information about the claims process, including the Bar Date); JD Supra, *Voyager Creditors—Deadline Set for Filing Bankruptcy Proofs of Claim*, Aug. 11, 2022, <https://www.jdsupra.com/legalnews/voyager-creditors-deadline-set-for-2824111/> (stating that the proof of claim "deadline is 5:00 p.m. ET on October 3, 2022"); Emily Tonelli, *Crypto Exchange FTX Wins Bid to Buy Out Bankruptcy Voyager for \$1.4B*, Sept. 27, 2022, <https://decrypt.co/110601/crypto-exchange-ftx-wins-bid-buy-out-bankrupt-voyager-1-4b> (stating that the proof of claim deadline is October 3); Christian Nwobodo, *Bankrupt Crypto Lender Voyager Set to Auction Off its Assets on Sept. 13*, Sept. 7, 2022, <https://cryptoslate.com/bankrupt-crypto-lender-voyager-set-to-auction-off-its-assets-on-sept-13/> (same).

¹⁸ In fact, the Second Circuit confirmed (in another context) that actual knowledge satisfies due process. See *In re Medaglia*, 52 F.3d 451 (2d Cir. 1995). *Medaglia* dealt with section 523(a)(3)(B) in dischargeability actions. The issue was "whether [the creditors'] actual knowledge of the bankruptcy petition was a constitutionally permissible substitute for formal notice of the [bar date], satisfying the requirements of due process." *Id.* at 453. The court held that "section 523(a)(3)(B)", which permits general knowledge of a case to substitute for particular knowledge of the bar date, [does not] violate[] constitutional due process." *Id.* at 454. If general knowledge of the case is constitutionally sufficient, then actual knowledge of the bar date is beyond sufficient.

notice.” *In re Lehman Bros. Inc.*, 493 B.R. 437, 445 (Bankr. S.D.N.Y. 2013) (quoting *SIPC v. Stellatos (In re Blinder, Robinson & Co., Inc.)*, 124 F.3d 1238, 1243 (10th Cir. 1997)).¹⁹ Due process merely requires that notice be “reasonably calculated under all the circumstances” to “apprise interested parties of the pendency of the action.” *Id.* (quoting *Mullane*, 339 U.S. at 314).

18. “Mailing a notice by First Class U.S. Mail to the ***last known address*** of a creditor satisfies due process because it is ***reasonably calculated*** to inform the creditor of the bar date for filing proofs of claim.” *Thornton v. Seadrill Ltd.*, 626 B.R. 422, 427 (S.D. Tex. 2021) (quoting *In re Eagle Bus Mfg., Inc.*, 62 F.3d 730, 736 (5th Cir. 1995)) (emphasis added); *In re Agway, Inc.*, 313 B.R. 31, 39 (Bankr. N.D.N.Y. 2004) (same); *In re La Sierra Fin. Servs., Inc.*, 290 B.R. 718, 733 (B.A.P. 9th Cir. 2002) (same). “Importantly, ‘[t]he ***creditor is responsible*** for notifying the debtor, trustee, or the court of any changes in [its] mailing address to guarantee that [it] be given reasonable notice.’” *Seadrill*, 626 B.R. at 427 (quoting *Eagle Bus*, 62 F.3d at 736) (emphasis in original). That’s because “notice to a known creditor is sufficient if provided to the address shown in the debtor’s books and records.” *In re The Brooklyn Hosp. Ctr.*, 513 B.R. 810, 820 (Bankr. E.D.N.Y. 2014); *Lehman Bros.*, 493 B.R. at 445 (“notice of the Bar Date [was] still adequate regardless of actual receipt by the Respondents because the Trustee properly relied upon addresses taken directly from [the debtor’s] records”).

19. Celsius contends that notice was sent to the wrong entity—Celsius Network Limited (“Celsius UK”) instead of Celsius Network LLC (“Celsius US”). Celsius provides

¹⁹ Likewise, in approving publication notice, the Supreme Court recognized “that publication notices often are not read and often do not actually come to the attention of all of the desired recipients.” *Tronox*, 626 B.R. at 719 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“It would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts.”)). Nevertheless, publication notice satisfies due process even if it never reaches the intended recipients.

absolutely no support for the view that sending notice to a parent company, which is also a debtor in the Celsius Case, instead of its subsidiary, makes the notice ineffective. In any event, that position has no merit here.

20. Celsius UK scheduled an Omnibus Wallet Service Agreement with Voyager on its Schedule G.²⁰ Celsius US's schedules do not include any agreements with Voyager. Celsius UK's address in the Omnibus Wallet Service Agreement is 35 Great St Helen's, London, EC63A 6AP, United Kingdom—the same address at which Voyager served the notice of Bar Date. Thus, it is reasonable that Voyager would serve the notice at that address. At bottom, “[i]f the creditor fails to update [its] address and as a consequence does not receive a notice of the bar date that was properly mailed, [the creditor] cannot later argue that [its] due process rights were violated.”²¹ *Seadrill*, 626 B.R. at 427 (quoting *Eagle Bus*, 62 F.3d at 736). Consequently, mailing notice to Celsius's last known address satisfied due process.

21. **Third**, Celsius is an “unknown” creditor because it has unasserted litigation claims. *See DePippo v. Kmart Corp.*, 335 B.R. 290, 297 (S.D.N.Y. 2005) (Creditors are “unknown” when their “interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor].”). Constructive notice is sufficient for “unknown” creditors and thus, Voyager's publication of the Bar Date was adequate due process. *Id.* at 295–96. “Typically, a known creditor may have engaged in some communication with a debtor concerning the existence of the creditor's claim.” *In re Drexel Burnham Lambert Grp. Inc.*, 151 B.R. 674, 681 (Bankr. S.D.N.Y.

²⁰ See Case No. 22-10966-MG, [Docket No. 7], p. 232. A true and correct copy of page 232 of Celsius UK's Schedule G is attached hereto as **Exhibit A**.

²¹ Celsius states incorrectly that, “[t]hrough ***no fault of its own***, Celsius did not receive notice of the Voyager bar date.” Motion at ¶ 55. But failure to keep a debtor apprised of address changes ***is the creditor's fault***.

1993), *aff'd*, 157 B.R. 532 (S.D.N.Y. 1993). Accordingly, courts repeatedly hold that creditors with undiscovered or unasserted litigation claims (like Celsius) are unknown.²²

22. The facts in *In re XO Communications* are similar to those present here. 301 B.R. 782 (Bankr. S.D.N.Y. 2003). The debtor (“XO”) and the party seeking authority to file a late claim, Teligent, Inc. (“Teligent”), were both chapter 11 debtors. XO and Teligent had a long-standing business relationship. *Id.* at 786. Although it was unclear whether Teligent was a creditor of XO, XO included Teligent on its service list. *Id.* However, Teligent’s address was incorrect and the notice of bar date was returned to XO as undeliverable, and XO took no further action to remedy the incorrect address. *Id.* XO also published notice of the bar date in the *Wall Street Journal*. *Id.* at 787. Six weeks after XO’s bar date, Teligent’s chapter 11 plan was confirmed and a representative was appointed to investigate and pursue avoidance actions. *Id.* A few months later, the representative filed a claim against XO asserting preference claims, and a motion to allow the claim as timely. *Id.* Based on these facts, the court determined that Teligent was an “unknown” creditor of XO because a preference claim is merely “conceivable, conjectural or speculative” and depends on “whether a claimant will ‘opt’ to pursue the claim.” *Id.* at 794. Because Teligent was an “unknown” creditor, the court concluded that XO’s notice by publication was sufficient. *Id.* at 801.

²² See, e.g., *DePippo*, 335 B.R. at 297 (litigation claimant was “clearly an ‘unknown’ creditor” where “prior to the institution of the present lawsuit . . . plaintiff never communicated any intention of making a claim against [the debtors] and [the debtors] were unaware plaintiff intended making such a claim”); *In re Victory Mem’l Hosp.*, 435 B.R. 1, 6 (Bankr. E.D.N.Y. 2010) (litigation claimant “was an unknown creditor” where “[s]he did not commence an action against the Debtor until” after the bar date); *In re Chateaugay Corp. Reomar, Inc.*, No. 86 B 11270 BRL, 2009 WL 367490, at *5 (Bankr. S.D.N.Y. Jan. 14, 2009) (“[Debtor] did not become aware of Plaintiffs’ claims until the [] receipt of the Complaints” and, “[a]s such, the Plaintiffs were unknown creditors.”); *In re Best Prod. Co., Inc.*, 140 B.R. 353, 356 (Bankr. S.D.N.Y. 1992) (litigation claimants were unknown because, “until their complaint was served,” the debtor “had no notice of the existence of their claims”).

23. Accordingly, Voyager’s publication of the Bar Date is sufficient notice for Voyager’s “unknown” creditors, which includes Celsius’s alleged preference claim. Celsius received the same notice that all holders of undiscovered and unasserted litigation claims normally receive. *See Tronox*, 626 B.R. at 719 (noting that “for **unknown** parties, reasonable publication notice is sufficient”) (citing *Mullane*, 339 U.S. at 314–18) (emphasis in original).

24. **Fourth**, it is “well established” that lack of knowledge regarding the bar date or a due process violation does not automatically excuse a dilatory creditor.²³ Thus, even if Celsius lacked notice and knowledge, it would not be “entitled” to file a late proof of claim. Motion at ¶ 40. Celsius would still need to satisfy *Pioneer*, which it cannot do.

(2) Celsius’s Ignorance of Its Claim Precludes Relief.

25. Celsius’s only other explanation is that it was unaware of its claim due to being “consumed with its own bankruptcy case.” Motion at ¶¶ 54, 2 (noting that “the bar date passed before Celsius **became aware** of its claim”) (emphasis added). That statement, however, is false. As early as August 30, 2022, more than one month before the Bar Date, Celsius acknowledged that the alleged preferential transfers occurred. Specifically, Celsius stated:

Voyager has been a customer with deposits held by [Celsius] and has maintained two deposit accounts on the Celsius platform—one that was opened in 2019 and another that was opened in 2020. Both accounts were substantially withdrawn upon prior to the Petition Date and the current value of the accounts is now approximately \$11,300.²⁴

²³ See, e.g., *In re Roman Cath. Diocese of Syracuse*, 638 B.R. 33, 40 (Bankr. N.D.N.Y. 2022) (“concur[ing] with **well established precedent** that lack of knowledge alone does not suffice to establish a right to relief from the bar date based on excusable neglect”) (emphasis added) (citing *Tronox*, 626 B.R. at 731 (“movant’s lack of actual knowledge of the bar date” is “not enough, by itself, to show that a movant’s delays were beyond the movant’s reasonable control”); *Motors Liquidation*, 619 B.R. at 74 (applying the “*Pioneer* [test] when denying certain creditors’ motion for leave to file late claims . . . despite the alleged due process violation” based on lack of notice); *Drexel Burnham*, 151 B.R. 674, 681 n.3 (Bankr. S.D.N.Y.) (noting that “the debtor’s obligation to give actual notice to known creditors does not completely absolve a creditor of its duty to file a proof of claim”).

²⁴ CN Docket No. 637, ¶ 5.

Additionally, Celsius filed its Schedules and Statements on October 5—two days after the Voyager Bar Date. Motion at ¶ 15. Statements must identify all “transfers to creditors within 90 days before filing [the] case.”²⁵ Celsius began preparing its Schedules and Statements *before* its case was filed on July 13, 2022. Motion at ¶ 11. When the Schedules and Statements were ultimately filed two days after the Bar Date, they included a detailed transaction history with Voyager.²⁶ Clearly, this transaction history was developed during Celsius’s preparations of its Schedules and Statements, which occurred in advance of the Bar Date.

26. Putting aside the fact that Celsius was aware of its potential claim in advance of the Bar Date, “ignorance of one’s own claim does not constitute excusable neglect.” *Jones v. Chemetron Corp.*, 212 F.3d 199, 205 (3d Cir. 2000); *Motors Liquidation*, 598 B.R. at 758 (denying late claim motion where the “excuse essentially boil[ed] down to ignorance” because “[i]gnorance of one’s own claim does not constitute excusable neglect” (quoting *Best Prod.*, 140 B.R. at 359)); *Energy Future Holdings*, 619 B.R. at 113 (same); *In re Charter Co.*, 113 B.R. 725, 729 (M.D. Fla. 1990) (same).

27. In *XO Communications*, the court dismissed an analogous situation as lacking merit to establish excusable neglect. The court found that Teligent was aware that preference actions existed in advance of XO’s bar date, but “made an informed decision to get its plan confirmed first” and afterwards complete its investigation and pursuit of avoidance actions. *XO Communications, Inc.*, 301 B.R. at 799. “Accordingly, it was within the reasonable control of Teligent to file a timely claim, but it opted to forego such a filing until after confirmation of its plan and thereby assumed the reasonably foreseeable consequences of such a determination.” *Id.*

²⁵ The official form is available at https://www.uscourts.gov/sites/default/files/form_b_207.pdf.

²⁶ CN Docket No. 973, p. 13815. A true and correct copy of page 13815 of Celsius US’s Statements of Financial Affairs is attached hereto as **Exhibit B**.

28. Celsius had knowledge of the alleged claim and the bar date, but seemingly prioritized other aspects of its case.²⁷ That is not a basis for excusable neglect. *See id.* (“There is nothing in the record that would support a finding that Teligent could not have made an inquiry regarding any particular preference claim, the collection of which may have been negatively impacted with the passage of time, and not simultaneously pursued its primary goal of getting its plan confirmed.”); *see Motors Liquidation*, 599 B.R. at 716 (“Appellant, however, offers no authority, and the Court’s own research has disclosed none, to support the proposition that a claimant who was otherwise able to file a proof of claim should be excused from timely doing so because [it] was focused on more pressing priorities.”). Indeed, allowing late claims whenever a creditor is focused on matters it subjectively deemed more pressing would nullify bar dates. *Id.* (“A bar date rule that would yield to undisclosed subjective priorities of creditors would effect no viable gatekeeping function at all.”). Being “too busy” is not a basis for excusable neglect.²⁸

29. The district court’s opinion in *Motors Liquidation* also makes clear that preoccupation with other matters does not establish excusable neglect. 599 B.R. 706. A creditor who missed the bar date in *General Motors* argued “his failure to file [a claim] was excusable because, as of the bar date, he was incarcerated and concentrating on pursuing his freedom from

²⁷ Any difficulty identifying Voyager as a possible preference target due to poor recordkeeping is no excuse. A company has exclusive control over the quality of its own records. Requiring several months to uncover a claim from its own books and records was therefore undeniably within Celsius’s own control. To reiterate, “creditors themselves have the ‘responsibility to diligently investigate what claims they may have against the debtor.’” *Motors Liquidation*, 598 B.R. at 753 (quoting *DPWN Holdings*, 871 F.Supp.2d at 158).

²⁸ *See, e.g., Tronox*, 626 B.R. at 734 (“As a general rule, ‘excusable neglect requires something more than a simple failure to meet the deadline due to a busy schedule.’” (quoting *United States v. Dumas*, 94 F.3d 286, 289 (7th Cir. 1996), *cert. denied*, 520 U.S. 1105 (1997))); *In re Frontier Commc’ns Corp.*, 641 B.R. 64, 74 (Bankr. S.D.N.Y. 2022) (“The Second Circuit has noted that the following reasons for delay do not weigh in favor of finding a mistake excusable: ... ‘preoccupation or an excessive workload.’” (quoting *Enron*, 419 F.3d at 126)); *In re Eagle-Picher Indus., Inc.*, 158 B.R. 713, 715–16 (Bankr. S.D. Ohio 1993) (rejecting excuse of “overworked and underfunded” staff); *In re Peninsular Oil Corp.*, 399 B.R. 532, 537 (Bankr. M.D. Fla. 2008) (noting “preoccupation will never be recognized as excusable neglect.”).

a wrongful conviction.” *Id.* at 716. The court was “mindful that it is indeed difficult to diligently supervise one’s legal affairs while incarcerated” and accepted “that his priority was to secure his own freedom before turning his attention to collecting civil damages for the harm he suffered.” *Id.* Nevertheless, the district court affirmed that the bankruptcy court had appropriately denied the creditor’s late claim motion stating that “[a] bar date rule that would yield to undisclosed subjective priorities of creditors would effect no viable gatekeeping function at all.” *Id.* at 716–17.

30. If an innocent prisoner focused on overturning his conviction is not a valid excuse for filing a late claim, Celsius’s claim that it was too busy should not be valid either. Particularly given: (i) the lack of complexity in filing a claim, *see Ellis*, 11 F.4th at 237 (stating that the burden to “comply with a bar date is low” and “[a] creditor does not even have to know the amount or validity of the claim”); and (ii) that Celsius is a sophisticated company represented by competent counsel. *See Motors Liquidation*, 598 B.R. at 758 (quoting *In re Hills Stores Co.*, 167 B.R. 348, 351 (Bankr. S.D.N.Y. 1994)) (when “analyzing the reason for the delay, courts also ‘take[] into account the movant’s sophistication.’”).

31. Celsius, in its words, “is one of the largest and most sophisticated cryptocurrency-based finance platforms in the world.” Motion at ¶ 8. On top of that, it is represented by not one, but **three**, of the largest and most sophisticated law firms in the world.²⁹ Celsius’s status as a “sophisticated party holding a substantial claim” that “is [extremely well] represented by counsel” undoubtedly “weighs heavily against a finding of excusable [neglect] under the applicable standards in this Circuit.” *AMR Corp.*, 492 B.R. at 666.

²⁹ See CN Docket Nos. 838; 843; 845, authorizing Celsius’s retention of Latham & Watkins, Akin Gump, and Kirkland & Ellis, respectively.

32. To be sure, Celsius *easily* could have asked one of the many lawyers at its disposal to file a protective claim.³⁰ It decided not to, and that decision forecloses relief. *In re Pac. Drilling S.A.*, 616 B.R. 634, 645 (Bankr. S.D.N.Y. 2020) (“A decision not to file a claim, even if that decision turns out to be unwise, is not ‘neglect’ of a kind that Rule 9006 excuses.” (citing *United States v. Darling*, 706 F. App’x 34, 36 (2d Cir. 2017))).

33. In sum, Celsius has no legitimate excuse for missing the Bar Date. Celsius, like all creditors, must comply with the Bar Date. There is no reason for special treatment. Because the legitimacy of Celsius’s reason for missing the Bar Date is not a “close case,” the Motion should be denied. *See Williams*, 391 F.3d at 416 (“the other three [*Pioneer* factors] are significant only in close cases”).

B. None of the Other Factors Justify Extending the Bar Date.

34. The remaining factors—“prejudice,” “length of delay,” and “good faith”—do not support a finding of excusable neglect.

35. *First*, as to factor one (prejudice), the Debtors (and their creditors) would be significantly prejudiced. Arguing to the contrary, Celsius makes three points: (1) Voyager is “in the preliminary stages of its bankruptcy and no plan has been confirmed”; (2) Celsius’s claim is “*de minimus* relative to [the] total unsecured claims pool”; and (3) the “circumstances surrounding [Celsius’s preference claim] are unique.” Motion at ¶¶ 46–49. Each argument fails.

36. Initially, arguments “that the judicial administration of the cases would not be impacted because the Debtors [have] not yet filed a plan and disclosure statement at the time movant filed the [late claim] Motion” are “not enough for movant to prevail.” *AMR Corp.*, 492

³⁰ The notion that Celsius was working “with limited resources” is nonsense. Motion at ¶ 54. How many creditors in this (and every other) bankruptcy have an army of restructuring professionals representing them? If Celsius couldn’t fill out a protective proof of claim—a simple 3-page standardized form—then no creditor can.

B.R. at 667. “Indeed, if a late claim was permitted so long as it was filed before the plan, the bar date would serve little purpose.” *Id.*; *see also Ellis*, 11 F.4th at 232 (bar dates are “essential in *formulating* a viable reorganization plan”) (emphasis added); *see also XO Communications, Inc.*, 301 B.R. 782, 799 (“the Bar Date Order was meant to function as a statute of limitations and effectively exclude such late claims in order to provide the Debtor and its creditors with finality to the claims process.”). Plus, the Voyager Case is hardly in its infancy. The Voyager Case, which filed more than six months ago, has been highly publicized. After a two-week auction in September, Voyager filed its first chapter 11 plan, which contemplated a sale to West Realm Shires Inc. d/b/a FTX US (“FTX”). That plan was upended in the middle of solicitation by FTX’s unexpected collapse. Since then, Voyager has filed a new plan with solicitation having already begun.

37. Additionally, the fact that a claim is supposedly “*de minimis*” in size is immaterial. “The argument that a claim is *de minimis* when viewed in the context of an entire case was rejected [by the Second Circuit] in the *Enron* case.” *In re Northwest Airlines Corp.*, No. 05-17930 ALG, 2010 WL 502837, at *3 (Bankr. S.D.N.Y. Feb. 9, 2010) (citing *Enron*, 419 F.3d at 129.³¹ Also, “considered in absolute terms, \$12.5 million [or \$7.7 million] is no small amount” and “[i]f it were, [the creditor] would likely not invest the time or resources it has in pursuing the claim.” *Enron*, 419 F.3d at 131.

38. Most importantly, by focusing on the claim’s size and uniqueness, Celsius misses the bigger picture. “The prejudice to the Debtors is not traceable to the filing of any single additional claim but to the impact of permitting exceptions that will encourage others to seek

³¹ *See also AMR Corp.*, 492 B.R. at 667 (denying late claim “represent[ing] only 0.01% of the total claims filed against the Debtors’ estate”); *Kmart*, 381 F.3d at 714 (denying late claim “represent[ing] only a small fraction of the approximately \$6 billion total of unsecured claims”).

similar leniency.” *Lehman Bros. Holdings*, 433 B.R. at 121. “Allowing even a single late claim risks inspiring similar efforts from creditors who also missed the bar date.” *Motors Liquidation*, 598 B.R. at 758.

39. “[C]oncerns about opening the floodgates to potential claimants” are “pronounced in a very large bankruptcy case such as this one.” *Roman Cath. Diocese of Syracuse, N.Y.*, 638 B.R. at 39. “The mere prospect of litigating additional motions to file post-bar-date proofs of claim is enough to prejudice the debtor.” *Motors Liquidation*, 598 B.R. at 759 (explaining that the “fear of rampant late-claims litigation is especially germane in a case like this one where the universe of potential creditors is practically limitless”).³² Ultimately, “every late-filed claim that is allowed would reduce the already-low percentage recoveries” to creditors and “therefore would be prejudicial to those other claimants.” *Tronox*, 626 B.R. at 699.

40. The Second Circuit explained in *Enron* that “[e]ven if [a] claim is negligible relative to the total size of [the debtor’s] bankruptcy,” the “more relevant question” is whether allowing the claim would lead to additional claims that “the bankruptcy court, having admitted the first claim, would be hard pressed to reject.” 419 F.3d at 131–32. The overwhelming majority of Voyager creditors are unrepresented individuals. If a sophisticated institutional creditor with a

³² The first-day declaration notes that Voyager’s platform has 3.5 million active users. Docket No. 15 at ¶ 2. Any one of those users could potentially have a claim. Significantly, “[t]he burden of establishing lack of prejudice lies with the party seeking relief under Bankruptcy Rule 9006, and [Celsius] ‘introduced no evidence concerning the number of *potential* claimants who might [be] prompted to file late claims in the wake of a ruling’ in its favor.” *In re Caritas Health Care, Inc.*, 435 B.R. 111, 117 (Bankr. E.D.N.Y. 2010) (quoting *Enron*, 419 F.3d at 132) (emphasis in original). Celsius’s speculation that “it is unlikely that granting Celsius the relief it seeks will result in a cascade [of additional claims]” counts for nothing. Motion at ¶ 49.

legion of lawyers can flout the Bar Date, the Court will certainly be “hard pressed” not to excuse ordinary individuals with late claims. That is reason enough to deny relief.³³

41. ***Second***, as to factor two (length of delay), Celsius’s delay weighs against finding excusable neglect. The bar date lapsed on October 3, and Celsius did not attempt to assert its claim until December 14 (when the Motion was filed). A multi-month delay, in absolute terms, is not insignificant. More importantly, though, ***any*** delay is too long when the reason is inadequate. *See Enron*, 419 F.3d at 128–29 (noting that courts “have rejected claims filed just one day late” and stating that “where an explanation is nonexistent, or not credible,” the delay may “weigh in favor of the debtor, even if the delay is, in absolute terms, quite short”); *Kmart*, 381 F.3d at 714 (affirming denial of a late claim even though the “claim was only one day late” where the reason was “a poor one”). Celsius’s proffered reasons for the delay are inadequate, so even a “quite short” delay would support denying relief.

42. Assuming Celsius’s ignorance was a valid reason (it is not), ignorance does not fully explain the delay. Celsius filed its Schedules and Statements, which included the alleged preferential transfers on October 5. Motion at ¶ 15. In August, Celsius stated publicly that Voyager withdrew the majority of its funds from Celsius’s platform. However, Celsius alleges that it did not discover the claim until November 5, and Celsius did not file the Motion until December 14. There is no excuse for these delays, and the delays alone justify denial of the Motion.

³³ Celsius makes much of the fact that the bar date was extended due to an amendment to the Debtors’ schedules. Motion at ¶ 48. Once more, that misses the point. The question is not whether a bar date can be extended. The question, rather, is what effect excusing a creditor’s compliance with the bar date would have when other creditors learn they, too, missed the bar date.

43. **Third**, as to the last factor (good faith), Celsius contends it “acted in good faith.” Motion at ¶ 55. Regardless of whether that’s true, “good faith cannot singlehandedly overcome the fact that it has failed to meet the other requirements of excusable neglect.” *Motors Liquidation*, 598 B.R. at 759; *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003) (“And rarely in the decided cases is the absence of good faith at issue”).

44. Putting that aside, it is not clear from the record that Celsius acted in good faith. “[T]here is no formal presumption of good faith” when applying the *Pioneer* factors. *In re Lyondell Chemical Company*, 543 B.R. 400, 410 (Bankr. S.D.N.Y. 2016). Celsius states that it began exploring its claims against Voyager as soon as it was made aware of the transfers. Motion at ¶ 55. If that is the case, then a timely claim should have been filed because Celsius was made aware of the transfers as early as August 30, 2022. Celsius also states that as soon as it was made aware of the transfers, Celsius began referring the matter to conflicts counsel. However, Celsius’s conflicts counsel, Akin Gump Strauss Hauer & Feld LLP, did not file a notice of retention to handle this matter until November 11, 2022.³⁴ And the retention is effective as of October 14, 2022—six weeks after Celsius stated publicly that Voyager withdrew crypto prepetition and nine days after Celsius filed Schedules and Statements that included the transfers.

45. Celsius also relies heavily on its position that it did not receive notice of the Bar Date “[t]hrough no fault of its own” in support of good faith. Motion at ¶ 55. This statement is troubling. Celsius was aware of Voyager’s Case—it is referenced in Celsius’s First Day Declaration—and Celsius was aware of Voyager’s withdrawals in advance of the Bar Date. Relying on a purported incorrect service address as a defense when notice was provided by other means (publication) and Celsius had knowledge of the bankruptcy does not constitute good faith.

³⁴ CN Docket No. 1330.

See In re J.S. II, L.L.C., 397 B.R. 383, 389 (Bankr. N.D. Ill. 2008) (“inaction during the pendency of the timeline for filing a claim against the Debtors does not constitute good faith.”).

46. Moreover, in the Ferraro Declaration filed in support of the Motion, Mr. Ferraro states that the Omnibus Wallet Agreement between Voyager and Celsius UK was amended and Celsius UK assigned its rights under the agreement to Celsius US and Celsius EU UAB. Ferraro Dec. at ¶ 5. Thus, according to Ferraro, Voyager should have served the notice of Bar Date on Celsius US and Celsius EU UAB, not Celsius UK. However, the Omnibus Wallet Agreement is reflected on Celsius UK’s schedules, not Celsius US.³⁵

47. Celsius’s public filings and statements conflict with certain of its arguments in support of good faith. *See XO Communications, Inc.*, 301 B.R. at 800 (finding that the movant failed to establish good faith when it proffered conflicting statements regarding notice of the bar date). For that reason, Celsius has not met its burden of establishing good faith.

48. As this Court has stated, courts do not “enjoy the job of enforcing the foregoing standards” but they are “bound to apply strict due process and excusable neglect standards” even when “the results are harsh.” *Tronox*, 626 B.R. at 699. A bar date’s “essential function” in “ensuring the sound administration of the bankruptcy estate” demands this result. *See Enron*, 419 F.3d at 127–28. In view of that, the Bar Date must be enforced and the Motion denied.

II. No Cause Exists to Lift the Automatic Stay.

49. Because there’s no basis for extending the bar date, there’s also no reason to grant relief from the automatic stay. Celsius requests stay relief for “cause” under Bankruptcy Code section 362(d)(1). Cause, in this context, “is an intentionally broad and flexible concept which must be determined on a case-by-case basis.” *In re Celsius Network LLC*, 642 B.R. 497, 501

³⁵ Celsius EU UAB is not a debtor in the Celsius Case.

(Bankr. S.D.N.Y. 2022) (citing *In re Project Orange Assocs., LLC*, 432 B.R. 89, 101 (Bankr. S.D.N.Y. 2010)). Courts consider various factors,³⁶ but, ultimately, the “decision whether to grant relief from the automatic stay falls within the discretion of the bankruptcy court.” *Id.* at 502 (citing *Burger Boys, Inc. v. S. St. Seaport Ltd. P’ship (In re Burger Boys, Inc.)*, 183 B.R. 682, 687–88 (S.D.N.Y. 1994)). Here, relief from the stay is not warranted because (1) granting relief would be futile and (2) the relevant *Sonnax* factors do not support the relief.

A. Granting Relief From the Stay Would Be Futile.

50. Without the ability to file a proof of claim, Celsius’s pursuit of its claim is futile. Courts consistently refuse to modify the automatic stay when the movant will ultimately be unable to assert a claim against the estate.

51. For example, in *Wright v. Placid Oil Co.*, 107 B.R. 104 (Bankr. N.D. Tex. 1989), a creditor moved to modify the automatic stay to pursue a tort claim in state court. “However, the bar date for filing proofs of claims . . . had already passed.” *Id.* at 105. The district court affirmed the lower court’s refusal to modify the stay because the creditor would “not [have been] allowed to file a proof of claim as a result of any judgment in that case; therefore, allowing that litigation to go forward would serve no purpose.” *Id.* at 108.

³⁶ The “*Sonnax* factors” are: (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor’s insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms. *Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984)).

52. Likewise, in *In re Holland*, 562 B.R. 305 (Bankr. E.D. Va. 2016), the debtor filed for bankruptcy in the midst of a divorce. His non-filing spouse (Ms. Holland) moved for stay relief to continue the divorce proceeding and, hopefully, obtain an equitable distribution award. She had not, however, filed a proof of claim. As a consequence, the court refused to lift the stay, explaining that the “deciding factor in this case is that the bar date to file proofs of claims expired without Ms. Holland having filed a proof of claim.” *Id.* at 308. “Without a timely-filed proof of claim, she [could] not receive a distribution.” *Id.* The requested relief would have caused “additional litigation, expense and delay for something that would have no significance.” *Id.* Because an “award by the [other] court would [have been] futile,” the court denied relief. *Id.*

53. Similarly, in *In re Elias*, No. 13-CV-01269 CBA, 2014 WL 1248042 (E.D.N.Y. Mar. 25, 2014), a creditor sought to pursue claims in state court. In affirming the bankruptcy court, the district court noted that the “relief [the creditor] sought from the automatic stay would have been to allow her to continue pursuing her state court actions against [the debtor,]” but those actions “were brought to collect the very debts that [the debtor] sought to have discharged in bankruptcy.” *Id.* at *8. Thus, “attempts to pursue those claims in state court—were the automatic stay to be lifted—would be futile,” so there was “no cause” to lift the stay. *Id.*

54. Celsius’s failure to file a proof of claim renders stay relief futile. Because “stay relief should not be granted to accomplish a futile act,” *GGC, LLC*, 329 B.R. at 39,³⁷ lifting the stay would serve only to create “additional litigation, expense and delay for something that would have no significance,” *Holland*, 562 B.R. at 308. “It would be absurd to allow the [] action to go ahead and require the estate to spend money litigating a debt that might [or, in this case, *will*] ultimately be uncollectible.” *Benedor Corp. v. Conejo Enter., Inc. (In re Conejo Enter., Inc.)*, 96 F.3d 346, 352–53 (9th Cir. 1996). Denying stay relief is therefore appropriate.

B. The *Sonnax* Factors Do Not Demonstrate Cause to Lift the Stay.

55. Assuming that lifting the stay would not be an exercise in futility, the relief remains unwarranted under the factors articulated in *Sonnax*.³⁸

56. **Factor (1):** whether relief would result in a partial or complete resolution of the issues. Lifting the stay is only a partial resolution. If the stay is lifted, Celsius will commence preference litigation against Voyager in the Celsius Case. Depending on the outcome of that proceeding, Celsius would need to return to this Court to seek to have its claim allowed and determine the claim’s treatment. Factor (1) therefore supports denying relief. *In re Residential Capital*, No. 12-12020 (MG), 2012 WL 3249641, at *4 (Bankr. S.D.N.Y. Aug. 7, 2012) (first

³⁷ Numerous other cases reinforce this conclusion. *See, e.g., In re Denman*, 513 B.R. 720, 727 (Bankr. W.D. Tenn. 2014) (because purchase option was not enforceable, “relief from the automatic stay [to exercise option] would be futile” and movant therefore could not “establish sufficient cause under a totality of the existing facts and circumstances to warrant a termination of the automatic stay”); *Ivester v. Miller*, 398 B.R. 408, 428 (M.D.N.C. 2008) (lower court was “within its discretion to deny relief from stay” where doing so “could result in a futile exercise”); *In re United Imports, Inc.*, 203 B.R. 162, 168 (Bankr. D. Neb. 1996) (“[Creditor] is not eligible to share in the distribution of any estate assets. It therefore does not stand to reason that the debtor should be forced to defend a lawsuit in which any monetary judgment obtained in the suit could not be enforced against assets of the estate.”); *Fedders North America, Inc. v. Branded Products, Inc. (In re Branded Products, Inc.)*, 154 B.R. 936, 952 (Bankr. W.D. Tex. 1993) (denying stay relief where “[movant] ha[d] not filed a claim in this bankruptcy case” and “was not currently entitled to share in any distribution of assets of this estate”).

³⁸ The third (whether the other proceeding involves the debtor as a fiduciary), eighth (whether the judgment claim arising from the other action is subject to equitable subordination, and ninth (whether movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor) *Sonnax* factors are not applicable.

factor weighed against lifting the stay because movants would need to go through the bankruptcy court claims process to collect on any judgment).

57. **Factor (2):** lack of connection or interference with the bankruptcy case. Lifting the stay would subject the Debtors to litigation in another forum, directly contradicting the stay's purpose. *In re Atreus Enterprises, Ltd.*, 120 B.R. 341, 346 (Bankr. S.D.N.Y. 1990) (explaining that the “stay is intended as an umbrella to protect a debtor temporarily from the shower of law suits and collection efforts by creditors *outside the bankruptcy court administering the debtor's case*”) (emphasis added). “[E]ven slight interference with the administration [of the estate] may be enough to preclude relief [from the stay].” *In re U.S. Brass Corp.*, 173 B.R. 1000, 1006 (Bankr. E.D. Tex. 1994). Factor (2) therefore supports denying relief.

58. **Factor (4):** whether a specialized tribunal with the necessary expertise has been established to hear the claim. Preference claims arise under the Bankruptcy Code, and all bankruptcy judges are adept at applying preference law. No “specialized tribunal” is required. Factor (4) therefore supports denying relief.

59. **Factor (5):** whether the debtor's insurer has assumed responsibility for defending the claim. Celsius seeks to recover directly from the Debtors' estates and litigation costs will be paid by the estates. Factor (5) therefore supports denying relief.

60. **Factor (6):** whether the action primarily involves third parties. The claim involves just two parties: Voyager and one of its unsecured creditors. Factor (6) therefore supports denying relief.

61. **Factor (7):** whether litigation in another forum would prejudice the interests of other creditors. Permitting one creditor to proceed in its preferred forum encourages others to seek the same relief. *In re SunEdison, Inc.*, 557 B.R. 303, 308–09 (Bankr. S.D.N.Y. 2016)

(recognizing the risk of “encourag[ing] other claimants to file their own stay relief motions”).

The costs of litigating additional stay relief motions would prejudice creditors. Factor (7) therefore supports denying relief.

62. **Factor (10):** the interests of judicial economy and the expeditious and economical resolution of litigation. Again, lifting the stay would result in one court (the Celsius court) addressing the claim’s merits and another court (this Court) determining the claim’s allowability and treatment. Consequently, **refusing** to lift the stay would promote judicial economy by allowing all issues to be resolved in one forum. Factor (10) therefore supports denying relief.

63. **Factor (11):** whether the parties are ready for trial in the other proceeding. Unlike many cases, where litigants have already expended time and energy in another proceeding, no complaint has even been filed. Celsius is not seeking to continue a proceeding that’s well underway—it’s seeking to commence a brand-new proceeding. Factor (11) therefore supports denying relief.

64. **Factor (12):** impact of the stay on the parties and the balance of harms. “Unsecured creditors like [Celsius] bear a heavy burden in proving that the balance of hardships favors lifting the stay.” *Celsius Network*, 642 B.R. at 504 (citing *In re W.R. Grace & Co.*, 2007 WL 1129170, at *3 (Bankr. D. Del. Apr. 13, 2007) (describing “the heavy and possibly insurmountable burden of proving that the balance of hardships tips significantly in favor of granting relief”)). Celsius will not suffer any unique harm by having to pursue its claim in this Court, as it is in the exact same boat as every other creditor. In fact, the stay creates no hardship whatsoever for Celsius because an action “which would otherwise be enjoined by [the automatic stay] if initiated in any other context, is not subject to the automatic stay if commenced in the bankruptcy court where the debtor’s bankruptcy case is pending.” *Atreus Enterprises*, 120 B.R.

at 346. Creditors like Celsius remain entirely free to pursue their claims; what they cannot do, however, is pursue their claims in another venue.

65. Thus, as it relates to the stay, the only question is whether Celsius will need to resolve its claim in Voyager's bankruptcy (like everyone else) or whether it will receive special treatment. Celsius "is merely one more creditor trying to recover from the limited assets of a bankruptcy estate, and its claim has no greater dignity than that of any other unsecured creditor." *See Branded Products*, 154 B.R. at 952. Celsius should therefore be denied special treatment, and its claim, like every other claim, should be resolved in this proceeding.

CONCLUSION

WHEREFORE, the Committee requests that the Court deny the Motion.

Dated: New York, New York
January 17, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January 2023, I caused a true and correct copy of the foregoing *Objection of the Official Committee of Unsecured to Celsius Network LLC's Motion Seeking an Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. § 362(D)(1) and Bankruptcy Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rule 3003(C) and 9006(B)(1)* to be served via (i) electronic notification pursuant to the CM/ECF system for the United States Bankruptcy Court for the Southern District of New York or (ii) e-mail, as indicated in the service list attached hereto.

/s/ Darren Azman
Darren Azman

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EXHIBIT A

Celsius UK Schedule G Excerpt

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.1616	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>OMNIBUS WALLET SERVICE AGREEMENT -- EFFECTIVE DATE: 06/12/2020</p>	<p>VOYAGER 33 IRVING PLACE 3060 NEW YORK, NY 10003</p>
2.1617	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>MUTUAL NONDISCLOSURE AGREEMENT -- EFFECTIVE DATE: 02/10/2021</p>	<p>VOYAGER DIGITAL, LLC 33 IRVING PLACE NEW YORK, NY 10003</p>
2.1618	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>MUTUAL NON DISCLOSURE AGREEMENT -- EFFECTIVE DATE: 07/20/2021</p>	<p>W3BCLOUD LIMITED 48 RINGSEND ROAD DUBLIN, 4 IRELAND (EIRE)</p>
2.1619	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>MUTUAL NONDISCLOSURE AGREEMENT -- EFFECTIVE DATE: 05/26/2022</p>	<p>WALLBROOK ADVISORY LIMITED 1 KING STREET LONDON, ENGLAND, EC2V 8AU UNITED KINGDOM</p>
2.1620	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>MUTUAL NONDISCLOSURE AGREEMENT -- EFFECTIVE DATE: 03/24/2022</p>	<p>WALNUT, INC. 454 MANHATTAN AVENUE NEW YORK, NY 10026</p>
2.1621	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>MUTUAL NONDISCLOSURE AGREEMENT -- EFFECTIVE DATE: 05/21/2022</p>	<p>WANG XINXI ADDRESS REDACTED</p>
2.1622	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>RESTRICTED TOKEN AGREEMENT -- EFFECTIVE DATE: 01/28/2021</p>	<p>WASEEM SHABOUT ADDRESS REDACTED</p>

EXHIBIT B

Celsius US Transfer Schedule Excerpt

Exhibit F

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Proposed Special Regulatory and Conflicts Counsel

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re:

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 22-10943 (MEW)
)

) (Jointly Administered)
)

) **Re: Docket Nos. 727 and 789**
)

DEBTORS' OBJECTION TO MOTION OF CELSIUS NETWORK LLC FOR ORDER (I) LIFTING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362(d)(1) AND BANKRUPTCY RULE 4001 AND (II) GRANTING LEAVE TO FILE LATE PROOF OF CLAIM PURSUANT TO BANKRUPTCY RULES 3003(c) AND 9006(b)(1)

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or “Voyager”) respectfully submit this objection (this “Objection”) to the *Motion of Celsius Network LLC for Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1)* (ECF Nos. 727 and 789) (“Motion”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

Preliminary Statement

1. The Debtors' bar date has passed and has delivered "finality to a process that will ultimately lead to the rehabilitation of the [Debtors] and the payment of claims under a plan of reorganization." *In re Drexel Burnham Lambert Grp. Inc.*, 151 B.R. 674, 679 (Bankr. S.D.N.Y.). Celsius Network LLC ("Celsius"), itself a reorganizing debtor in bankruptcy proceedings before this Court, has now come forward and threatened to upend that finality by plunging the Debtors into costly and uncertain litigation all without having timely filed a claim in the Debtors' chapter 11 cases. Celsius, by its Motion, seeks extraordinary relief from this Court, in the form of (i) an extension of the Debtors' bar date so that it may file an out-of-time claim **and** (ii) relief from the automatic stay so that it may pursue novel legal theories against the Debtors' in order to substantiate that claim, **and upon which its claim is wholly contingent**. Celsius is entitled to no such relief.

2. The burden of obtaining an extension of the bar date to file a late claim lies squarely with the late creditor. Celsius cannot demonstrate to the Court that its failure to comply with the well-publicized bar date (which was also sent by notice to the address on file for Celsius in the Debtors' books and records) was the result of "excusable neglect." In fact, Celsius's only justification for its tardiness is that it was busy with its own bankruptcy proceeding around the time of the October 3, 2022 bar date in the Debtors' chapter 11 cases. *See Order (I) Setting Deadlines for Submitting Proofs of Claim, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof* ("Bar Date Order") (ECF No. 218).² While this may be neglect, it certainly is not excusable.

² References to docket entries in this case are denoted by "(ECF No. ____)." References to docket entries in Celsius's bankruptcy case, *In re Celsius Network LLC, et al.*, Case No. 22-10964 (MG) (Bankr. S.D.N.Y.), are denoted by "(Celsius ECF No. ____)."

3. Celsius tacitly admits the weakness of its excuse by inverting the logical order of the relief it seeks. That is, in its Motion Celsius seeks relief from the automatic stay so that it may pursue legal claims against the Debtors *before* asking this Court to permit it to actually file a claim against the Debtors. This is, of course, completely backwards, as the Court would not reach the question of whether to grant any relief from the automatic stay until after determining whether Celsius filed a timely claim in the first place. Tactics aside, the simple fact of the matter is that Celsius cannot carry its burden to show that its failure to file a timely claim was excusable. Moreover, Celsius admits that its claim (if allowed) would be a general unsecured claim against debtor Voyager Digital LLC, which currently has a claim pool of only \$14 million. Thus, Celsius's claim, if ultimately allowed, would represent approximately 35% of the claims in that class and significantly reduce recoveries to the extreme prejudice to the creditors of Voyager Digital LLC. At best, distributions to creditors in Class 4A will be delayed and/or minimized pending the resolution of the Celsius claim.

4. Finally, even if Celsius could establish excusable neglect for its failure to file a timely claim (and it cannot), Celsius still cannot carry its burden to demonstrate cause to lift the automatic stay. As explained at length herein, Celsius is not entitled to the extraordinary relief from the automatic stay that it seeks so that it may assert speculative, novel arguments against the Debtors in some other forum that will take an untold amount of time, energy, and resources to resolve. This is particularly the case where it is primarily the Debtors' creditors who will be significantly prejudiced due to the late and reduced recoveries that they will receive if Celsius is permitted to effectively divert the Debtors' time and resources to defend against potentially futile claims by an entity that is alleging entitlement to such a large percentage of the unsecured creditors' claim pool. Celsius's Motion should be denied in its entirety.

Background

5. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on July 5, 2022. The Debtors were the first major cryptocurrency exchange to file bankruptcy cases in the United States. The Court set a bar date of October 3, 2022 for the filing of claims against the Debtors. *See* Bar Date Order (ECF No. 218).

I. Celsius Files Chapter 11 Cases Shortly After the Debtors and Asserts Ownership Over Certain Assets on Celsius's Platforms, Including Assets of the Debtors.

6. Celsius and certain affiliated debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court on July 13, 2022. At the time of Celsius's voluntary petitions, Celsius offered two different platforms through which customers could invest cryptocurrency and other funds with Celsius: an "Earn" platform, which Celsius claimed provided a return on any amounts placed thereon by customers, and a "Withhold" platform, which did not provide any return. *See generally Debtors' Amended Motion for Entry of an Order (I) Establishing Ownership of Assets in the Debtors' Earn Program, (II) Permitting the Sale of Stablecoin in the Ordinary Course and (III) Granting Related Relief* (Celsius ECF No. 1325) (explaining Celsius's view of the two platforms).

7. The Debtors were a customer of Celsius and held significant funds on Celsius's Earn and Withhold platforms. The Debtors' placement of assets on Celsius's various cryptocurrency platforms, including the "Earn" platform, was governed by an Omnibus Wallet Services Agreement (the "Wallet Agreement") entered into as of June 12, 2020 between the Debtors and a Celsius affiliate. *See* Wallet Agreement (attached as **Exhibit A** to the Whalen Decl.³). The Debtors entered into an amended Wallet Agreement (the "Amended Wallet

³ "Whalen Decl." means the *Declaration of Michael C. Whalen in Support of Debtors' Objection to Motion of Celsius Network LLC for Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy*

Agreement”) on August 19, 2021 with certain Celsius affiliates, including the Celsius affiliate that was party to the Wallet Agreement. *See* Amended Wallet Agreement (attached as **Exhibit B** to the Whalen Decl.).

8. The amount of funds that the Debtors held on Celsius’s platforms varied over time, and the Debtors actively managed any funds that they held on Celsius’s platforms.

9. As of the filing of Celsius’s chapter 11 cases, Celsius took the position, contrary to the views of its customers, including the Debtors, that it held title to all assets placed on Celsius’s “Earn” platform by customers. Subsequently, Celsius has argued that any assets placed on its “Earn” platform by customers which were transferred off of that platform by customers in the ninety days prior to the commencement of Celsius’s chapter 11 cases “are likely subject to preference claims by Celsius under section 547 of the Bankruptcy Code.” Motion ¶ 19.

10. Celsius claims that the Debtors transferred \$7,700,675.01 worth of cryptocurrency off of the “Earn” platform in the ninety days prior to the commencement of Celsius’s chapter 11 cases.

II. Celsius’s Claim Would Fall into a Class of Claims that Currently Has \$14 Million in Projected Claims.

11. On January 13, 2023, the Debtors Filed their *Second Amended Disclosure Statement Relating to the Third Amended Joint Plan Of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”) (ECF No. 863). The Court approved the Disclosure Statement on the same day. *See Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Adequacy of the Debtors’ Disclosure Statement, (III) Approving (A)*

Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1), filed simultaneous herewith.

Procedures for Solicitation, (B) Forms of Ballots and Notices, (C) Procedures for Tabulation Of Votes and (D) Procedures for Objections (ECF No. 861)

12. Under the terms of the Debtors' proposed plan of reorganization, as explained in the Disclosure Statement, Celsius's claim—if granted permission to file late—would fall into Class 4A OpCo General Unsecured Claims. In its Motion, Celsius asserts that its claim would be unsecured and that Voyager Digital, LLC is the entity against which Celsius would bring such claim, as it was the counterparty to the Wallet Agreement, and thus the accountholder for purposes of placing assets on Celsius's platforms.

13. Voyager Digital, LLC is the "OpCo" entity for purposes of determining claims that fall into Class 4A under the Debtors' proposed plan of reorganization, and so holders of general unsecured claims against Voyager Digital, LLC are members of Class 4A. *See* Disclosure Statement at 56 (defining Voyager Digital, LLC as "OpCo"). The current projected amount of allowed claims in Class 4A OpCo General Unsecured Claims is \$14 million. *See* Disclosure Statement Order, Ex. 4 at 2 (ECF No. 861-1). Based on the \$14 million in claim amounts projected for Class 4A, the Debtors project recoveries of between 35% and 50% based on projected outcomes in the Debtors' chapter 11 cases. *Id.* Celsius's claim for approximately \$7.7 million would likely (i) fall into Class 4A, (ii) represent approximately 35% of the *entire* Class 4A claim pool, and (iii) diminish customer recoveries accordingly.

Objection

III. Celsius Has Not Carried Its Burden of Demonstrating Excusable Neglect in Failing to Timely File a Claim by the Court's Bar Date.

14. The Federal Rules of Bankruptcy Procedure require bankruptcy courts to set a bar date for filing claims against a debtor. *See* Fed. R. Bankr. P. 3003(c)(3) ("The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed."). "A

bar order serves the important purpose of enabling the parties to a bankruptcy case to identify with reasonable promptness the identity of those making claims against the bankruptcy estate and the general amount of the claims, a necessary step in achieving the goal of a successful reorganization.” *In re Hooker Invs., Inc.*, 937 F.2d 833, 840 (2d Cir. 1991). The bar date set by the Court is critical in “provid[ing] a date certain after which a plan can be negotiated, formulated, and eventually confirmed.” *In re Drexel Burnham Lambert Grp. Inc.*, 151 B.R. 674, 679 (Bankr. S.D.N.Y.). “Thus, a bar order does not ‘function merely as a procedural gauntlet,’ but as an integral part of the reorganization process.” *Hooker*, 937 F.2d at 840 (quoting *In re Kolstad*, 928 F.2d 171, 173 (5th Cir. 1991)).

15. Federal Rule of Bankruptcy Procedure 9006(b)(1) provides a limited exception to creditors who miss the bar date “where the failure [of the creditor] to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b)(1). “A creditor seeking to extend the bar date bears the burden of proving ‘excusable neglect.’” *In re Houbigant, Inc.*, 188 B.R. 347, 354 (Bankr. S.D.N.Y. 1995), *corrected* (Nov. 8, 1995) (quoting *In re R.H. Macy & Co., Inc.*, 161 B.R. 355, 360 (Bankr. S.D.N.Y. 1993)).

16. In evaluating whether a creditor has demonstrated “excusable neglect,” Courts in this Circuit apply the so-called *Pioneer* test, and consider “the danger of prejudice to the [non-movant], the length of the delay and its potential impact upon judicial proceedings, the reason for the delay, including whether it was in the reasonable control of the movant, and whether the movant acted in good faith.” *United States v. Hooper*, 9 F.3d 257, 259 (2d Cir. 1993) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)); *See In re Lyondell Chem. Co.*, 543 B.R. 400, 409 (Bankr. S.D.N.Y. 2016) (“Courts have consistently applied the *Pioneer* test in this Circuit.” (collecting cases)).

17. Critically, the *Pioneer* factors are not afforded equal weight. The third factor—the reason for the creditor’s delay—is “the predominant factor.” *Lyondell*, 543 B.R. at 409 (Bankr. S.D.N.Y. 2016) (quoting *In re Musicland Holding Corp.*, 356 B.R. 603, 607 (Bankr. S.D.N.Y. 2006)). “Indeed, the other factors are relevant ‘only in close cases.’” *In re Victory Mem’l Hosp.*, 435 B.R. 1, 5 (Bankr. E.D.N.Y. 2010) (quoting *Williams v. KFC Nat’l Mgmt. Co.*, 391 F.3d 411, 416 (2d Cir. 2004)). “Notwithstanding increased emphasis on the reason for delay, ‘the slightest indication of bad faith, prejudice, or adverse impact on the administration of the case’ is a reason to find the neglect inexcusable.” *Id.* at 409 n. 37 (quoting *In re Keene Corp.*, 188 B.R. 903, 908 (Bankr. S.D.N.Y. 1995)).

18. Here, each of the four *Pioneer* factors weighs against granting Celsius relief from its failure to file a claim by the bar date.

A. Celsius Has Not Established and Cannot Establish a Valid Reason for Delay.

19. Celsius does not offer a valid reason for its failure to timely file a claim. In its Motion, Celsius provides two entirely baseless justifications for its delay: (i) that it did not receive notice of the bar date, and (ii) that it was justifiably occupied with its own bankruptcy case such that it could not comply with the Court’s bar date in the Debtors’ cases.

20. **First**, Celsius unquestionably received adequate notice of the bar date. In bankruptcy law, there are two categories of creditors: known and unknown creditors. Debtors are only required to provide actual notice of the bar date to ‘known’ creditors. *In re XO Commc’ns, Inc.*, 301 B.R. 782, 792 (Bankr. S.D.N.Y. 2003). By contrast, constructive notice suffices if a creditor is ‘unknown’ to the debtor. *Id.* “An ‘unknown’ creditor is a claimant whose identity or claim is not ‘reasonably ascertainable’ or is merely ‘conceivable, conjectural or speculative.’” *Id.* at 793 (quoting *In re Thomson McKinnon Sec., Inc.*, 130 B.R. 717, 720 (Bankr. S.D.N.Y. 1991)).

“[A] debtor is not obligated to try to find and serve notice on any individual who could potentially be a creditor.” *In re BGI, Inc.*, 476 B.R. 812, 823 (Bankr. S.D.N.Y. 2012). For unknown creditors, notice by publication satisfies a debtor’s bar date notice requirement. *Id.* at 820.

21. In its Motion, Celsius assumes it is a “known” creditor entitled to actual notice of the bar date, which it argues it did not receive. However, in reality, Celsius is an **unknown** creditor and was not entitled to anything more than constructive notice of the bar date. As explained, Celsius’s purported claim rests on a novel legal theory regarding the ownership of funds placed on Celsius’s “Earn” platform by the Debtors and other Celsius customers. Celsius articulated this theory in its own bankruptcy proceedings *after* the Debtors filed their chapter 11 cases and their schedules and statements therein. Even at this point, Celsius’ claim is nothing more than “conjectural” because it remains subject to adjudication between Celsius and its customers. *In re Chemtura Corp.*, No. 09-11233 (JLG), 2016 WL 11651714, at *12 (Bankr. S.D.N.Y. Nov. 23, 2016) (“An ‘unknown’ creditor is one whose interests are either conjectural or future[.]” (internal quotations and citations omitted)). Indeed, this is Celsius’s very reason for wanting to file a claim in the Debtors’ bankruptcy cases: to litigate its theory of ownership over certain assets that the Debtors had placed on Celsius’s “Earn” platform. Put simply, there is no way that the Debtors could have foreseen that Celsius would come up with this novel argument and therefore consider itself a creditor here. Celsius is clearly an unknown creditor.

22. The Debtors published notice of the bar date in the New York Times on August 10, 2022, and the Financial Times on August 11, 2022. *See Proof of Publication in the New York Times* (ECF No. 272) & *Proof of Publication in the Financial Times* (ECF No. 271). As an unknown creditor, Celsius, was on notice of the deadline through Voyager’s publication in these

nationally renowned papers.⁴ Celsius's arguments that it did not receive the actual notice of the bar date are irrelevant because it was not entitled to such notice.

23. Further, Celsius received actual notice of the bar date even though it was not technically entitled to it. The Debtors sent Celsius notice of the bar date to an address provided by Celsius in both the Wallet Agreement and the Amended Wallet Agreement. In its Motion, Celsius argues that that address is "an out of date address for a space that Celsius UK no longer occupies." Ferraro Decl. ¶ 7 (ECF No. 729). But there was no other logical place for the Debtors to send a notice related to that agreement, and that address was the only address that the Debtors were legally required to notice. *See In re Best Prod. Co., Inc.*, 140 B.R. 353, 358 (Bankr. S.D.N.Y. 1992) ("Whereas a debtor must review its own books and records to ascertain the identity of creditors, a debtor is not required to search elsewhere for those who might have been injured.").

24. **Second**, Celsius's argument that it can still demonstrate a valid reason for its delay even if it received adequate notice also fails. As a matter of law, Celsius's contemporaneous preoccupation with its own bankruptcy filing is not a compelling reason for delay. *See Ragguette v. Premier Wines & Spirits*, 691 F.3d 315, 330 (3d Cir. 2012) ("It is well established that a busy caseload generally does not constitute a basis for a finding of excusable neglect."). It is also belied by the facts here. In its own bankruptcy case, Celsius filed three motions to extend the deadline

⁴ In addition, the Debtors' bankruptcy filing was widely reported. *See, e.g.*, Crypto Broker Voyager Digital Files for Bankruptcy Protection, Wall St. J. (July 6, 2022, 7:18 PM), <https://www.wsj.com/articles/crypto-broker-voyager-digital-files-for-bankruptcy-protection-11657098630>; Crypto Broker Voyager Digital Files For Chapter 11 Bankruptcy, Forbes (July 6, 2022, 1:12 AM), <https://www.forbes.com/sites/ninabambysheva/2022/07/06/crypto-broker-voyager-digital-files-for-chapter-11-bankruptcy/?sh=53a068d13845>; Crypto brokerage Voyager Digital files for Chapter 11 bankruptcy protection, CNBC (July 6, 2022, 4:43 AM), <https://www.cnbc.com/2022/07/06/crypto-firm-voyager-digital-files-for-chapter-11-bankruptcy-protection.html>.

to file its schedules and statements, the first of which was filed on July 14, 2022,⁵ and the last of which was filed on September 16, 2022.⁶ While the Court apparently never ruled on that motion,⁷ Celsius ultimately filed its schedules and statements in its own bankruptcy case on October 5, 2022, a mere two days after the Debtors' bar date. Thus, the record reflects that Celsius was working on compiling its schedules and statements for at least more than two months prior to the Debtors' bar date. Celsius would necessarily have identified Voyager as a potential creditor well in advance of the Debtors' bar date. Interestingly, while Celsius argues that its focus on its own bankruptcy caused it to miss the bar date in the Debtors' proceedings, it is actually Celsius's very preparation of schedules and statements in its own bankruptcy that should have highlighted its potential claim against Voyager and put it on notice that it should file a claim in the Debtors' proceedings. This argument also fails.

25. Finally, Celsius's argument that preference claims are generally identified by debtors later in chapter 11 cases does not justify Celsius's delay here. The Debtors' chapter 11 cases are the first US-based bankruptcy proceedings for a cryptocurrency brokerage, a relatively nascent industry that includes Celsius. It is implausible that Celsius was not actively aware of the Debtors' bankruptcy, and Celsius makes no such assertion. Further, Celsius and the Debtors had been in business together since at least June of 2020. *See* Wallet Agr't (Ex. A). Celsius would necessarily have known that the Debtors—either presently or historically—had placed significant

⁵ *See Motion Seeking Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, (II) Extending Time to File Rule 2015.3 Financial Reports and (III) Granting Related Relief* (Celsius ECF No. 8).

⁶ *See Motion Seeking Entry of an Order Granting a Third Extension of Time to File Schedules and Statements of Financial Affairs* (Celsius ECF No. 833).

⁷ *See Notice of Withdrawal of Debtors' Motion Seeking Entry of an Order Granting a Third Extension of Time to File Schedules And Statements of Financial Affairs* (Celsius ECF No. 1064).

cryptocurrency deposits onto Celsius's platform. Thus, upon learning of the Debtors' bankruptcy, which made national and international news, Celsius should reasonably have known that it might have claims to assert in the Debtors' chapter 11 proceedings, whether preference-based or otherwise. In fact, Celsius first raised questions regarding the ownership of assets on its platforms "[o]n the first day of [Celsius's] chapter 11 cases," *months before the Debtors' bar date*. See *Debtors' Amended Motion for Entry of an Order (I) Establishing Ownership of Assets in the Debtors' Earn Program, (II) Permitting the Sale of Stablecoin in the Ordinary Course and (III) Granting Related Relief* at 2 (Celsius ECF No. 1325). Thus it is implausible that Celsius would not have been aware that the Debtors' bankruptcy likely had significant ramifications for Celsius's own accounts and its position regarding funds on the "Earn" platform, and its failure to timely assert a claim, whether a preference claim or otherwise, is anything but excusable.

26. Celsius does not establish a valid reason for its delay, and the Court should deny the Motion on this basis alone. See *Victory Mem'l Hosp.*, 435 B.R. at 5 (other factors irrelevant where movant has inadequate reason for delay). Celsius received adequate notice of the bar date as an unknown creditor, received actual notice of the bar date even though it was not entitled to the same, and cannot establish excusable neglect based solely on its occupation with its own bankruptcy case, which would have led to the discovery of its claim against the Debtors not distracted it from the same. Even if Celsius did have a valid reason for its delay (it does not), the remaining *Pioneer* factors also counsel in favor of denying Celsius's motion to file a late claim.

B. The Debtors and Their Creditors Will Be Prejudiced by Celsius's Late Claim.

27. The Debtors and their constituents, namely the unsecured creditors, will be significantly prejudiced by Celsius's late claim. Celsius minimizes the likely impact of its late claim by focusing solely on the potential ramifications of the relief it seeks vis-a-vis other

preference claims filed by creditors of the Debtors who are themselves reorganizing. The ramifications of Celsius's late claim would strike far further, however. If Celsius is allowed to file a late claim based only on its having been too occupied with its own bankruptcy to have noticed the bar date in this case, any other unknown creditor (and there could be many, hence why they are "unknown") could come forward seek to file a late claim on the same or a similar basis. This would undermine the very logic behind the bar date and threaten to upend the Debtors' chapter 11 cases.

28. For the same reason, Celsius's argument regarding the limited extension of the Debtors' bar date is unavailing. That extension was for known creditors placed on the Debtors' amended schedules and statements, not unknown creditors—like Celsius—with speculative claims that are altogether unknown to the Debtors. *See In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995) (“[A]llowing Fibreboard’s claim could adversely affect the administration of the case by possibly opening the floodgates to many similar claims.”).

29. Moreover, the only stated basis for Celsius's claim is a novel legal issue that will require lengthy and time-consuming litigation at the expense of the resources of the Debtors' estates. Allowing Celsius to file a late claim to permit it to potentially pursue untested claims would significantly prejudice Debtors and their constituencies.

30. Finally, the size of Celsius's claim—\$7.7 million—is material and risks appreciably decreasing the recovery for unsecured creditors. *See Black v. Diamond*, 163 Fed. App'x 58, 60-61 (2d Cir. 2006) (holding that the impact on other constituents by allowing an untimely claim to collect from a “discrete fund” is a relevant consideration under *Pioneer*). This is particularly so where Celsius's claim will almost certainly fall into Class 4A OpCo General Unsecured Claims, which has a limited claim pool of \$14 million. Allowing Celsius to file its late

claim would expand the current Class 4A claim pool by more than 50%, with Celsius's claim ultimately representing approximately 35% of the entire class of claims. Celsius's attempt to deflect the size of its potential claim by reference to the Debtors' entire claim pool is misleading. *See In re Tronox Inc.*, 626 B.R. 688, 725 (Bankr. S.D.N.Y. 2021) (holding that if the late claims "would have a large impact on the recoveries of other creditors, then permitting the late-filed claims would be a form of prejudice that weighs against a finding of excusable neglect." (internal quotations and citations omitted)). Celsius's proposed claim is significant and prejudicial when appropriately viewed in terms of the relative size of claims in Class 4A.⁸

31. All of these factors prejudice the Debtors and their restructuring constituencies and require enforcement of the bar date.

C. The Late Claim Will Have a Significant Impact on the Administration of the Debtors' Estates in the Form of Significant Administrative Costs.

32. Allowing Celsius to file its claim late will adversely impact the progression of the Debtors chapter 11 cases. As explained above (*supra* ¶ 21), Celsius's claim is entirely speculative and based solely on novel legal arguments. As a result, allowing Celsius to file a late claim is not simply a matter of permitting access to the Debtors' claim pool. Celsius's claim and the novel underlying legal issues will require significant litigation from all Celsius customers, including the Debtors, that had assets on Celsius's "Earn" platform and withdrew those assets during Celsius's preference period.

33. Litigation over the ownership of assets placed on Celsius's platforms will necessarily, and negatively impact creditor distributions. At the moment, the Court has set March

⁸ Celsius has also indicated that its purported claim of \$7.7 million claim may be not be all that it is seeking. "Other withdrawals and transfers [by the Debtors] may also be subject to challenge." Celsius Mot. ¶ 19.

2, 2023 as the date of the Debtors' confirmation hearing. *See* Disclosure Statement Order at 10 (ECF No. 861). Were this Court to grant Celsius relief from the automatic stay, it is unlikely that such litigation could even commence before the Debtors' confirmation hearing, with any resolution as to the ownership issues suspended in the distant future. This means that the Debtors would need to set aside a reserve for amounts potentially due to Celsius following the resolution of litigation between Celsius and the Debtors at some point in the future. **Such a reserve would delay millions of dollars in distributions to the Debtors' creditors by months or even years.**

34. Celsius points only to the fact that the Debtors do not yet have a confirmed plan to support its argument that Celsius's late claim will not adversely impact the Debtors' bankruptcy cases. In so doing, Celsius incorrectly cites *In re Keene*, wherein the Court held that the fact that the debtor's plan had not yet been confirmed was insufficient to overcome the fact that the movant failed to establish excusable neglect. *See Keene*, 188 B.R. at 913 (holding that lack of confirmed plan does not overcome lack of excusable neglect). Likewise, here, the lack of a confirmed plan does nothing to mitigate the prejudice and impact to the Debtors' chapter 11 cases that would result from allowing Celsius to file a speculative, late claim.

D. Celsius Fails to Establish Its Good Faith in Missing the Bar Date

35. While the Debtors do not contend that Celsius acted in bad faith, it is Celsius's affirmative duty to establish its good faith. Because Celsius still needs to provide an adequate explanation for its delay, Celsius fails to establish its good faith. And, to be clear, even if Celsius could establish good faith in missing the bar date, that would not be enough to overcome its inability to demonstrate excusable neglect, or otherwise carry its burden to file a late claim. *See In re Lehman Bros.*, 433 B.R. at 121 (holding that although there was no evidence of movants' having acted in bad faith, movants' good faith was insufficient to overcome their inability to demonstrate excusable neglect). As a result, this factor does not favor relief from the bar date. *In re BGI, Inc.*,

476 B.R. 812, 826 (Bankr. S.D.N.Y. 2012) (good faith factor does not support finding of excusable neglect where movant fails to carry burden to show good faith).

IV. Celsius Does Not Carry Its Burden to Show the Stay Should Be Lifted, and the *Sonnax* Factors Favor Continuing the Stay.

36. The Court need not, and should not, entertain Celsius's request to lift the stay because Celsius has failed to establish excusable neglect for missing the bar date. Absent a timely claim against the Debtors, Celsius has nothing to litigate and there is no justification for granting relief from the automatic stay.

37. But even if this Court somehow determined that Celsius met the excusable neglect standard (it should not), the Court should still deny Celsius's request to lift the automatic stay to pursue its novel arguments against the Debtors. In order to obtain relief from the automatic stay, Celsius bears the burden of demonstrating "cause" for such relief under Section 362(d)(1) of the Bankruptcy Code. *See In re Residential Cap., LLC*, 501 B.R. 624, 643 (Bankr. S.D.N.Y. 2013). In assessing a request for relief from the automatic stay, courts analyze the following factors from *In re Sonnax Indus., Inc.* (the "*Sonnax* Factors"):

- (1) whether relief would result in a partial or complete resolution of the issues,
- (2) the lack of any connection with or interference with the bankruptcy case,
- (3) whether the other proceeding involves the debtor as a fiduciary,
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action,
- (5) whether the debtor's insurer has assumed full responsibility for defending the action,
- (6) whether the action primarily involves third parties,
- (7) whether litigation in another forum would prejudice the interests of other creditors,

(8) whether the judgment claim arising from the other action is subject to equitable subordination,

(9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor,

(10) the interests of judicial economy and the expeditious and economical resolution of litigation,

(11) whether the parties are ready for trial in the other proceeding and

(12) the impact of the stay on the parties and the balance of harms.

907 F.2d 1280, 1286 (2d Cir. 1990). “Not all of the *Sonnax* Factors are relevant in every case, and ‘cause’ is a broad and flexible concept that must be determined on a case-by-case basis.” *In re Residential Cap., LLC*, 501 B.R. 624, 643 (Bankr. S.D.N.Y. 2013).

38. In total, seven *Sonnax* Factors are relevant here,⁹ and all weigh in favor of maintaining the stay.

39. *Balance of the harms.* There would be significant harm to the Debtors’ estates and creditors in the form of significant legal fees and procedural delay if the stay is lifted and Celsius’s entirely speculative preference action is allowed to proceed. *See, e.g., In re Motors Liquidation Co.*, 2010 WL 4630327, at *4, *7 (S.D.N.Y. Nov. 8, 2010) (affirming denial of lift-stay motion and noting that “allowing Appellant to proceed with the ERISA suit would force MLC to expend estate resources to defend that action” and “increased costs associated with litigation in a separate forum would prejudice the Reorganized Debtors”). Any amount that Celsius could potentially recover—to the extent that the same quantifies the harm Celsius might experience by denial of its motion—is likely far less than the amount of its claim. This is because as an unsecured creditor,

⁹ Celsius has selectively addressed a limited number of *Sonnax* Factors, and tellingly ignores many that are relevant here. Celsius also improperly analyzes the few *Sonnax* Factors it does address, all of which support denying Celsius’s request to lift the stay. The other relevant *Sonnax* Factors that go unaddressed by Celsius further support denying the Motion.

Celsius is likely to recover only a fraction of its claim, and an amount that may be subsumed by Celsius's own litigation expense in pursuing its theory regarding assets on the "Earn" platform. Conversely, the Debtors would be significantly harmed by the litigation costs they would incur in defending the action, with the potential that such expenditures exceed any dollar recovery Celsius receives, should Celsius succeed. *See In re General Oil Distributors, Inc.*, 33 B.R. 717 (Bankr. E.D.N.Y. 1983) (denying motion to lift stay where, among other things, "the potential harm to the debtor of greater legal fees and other expenses defending [the action] is a strong countervailing factor").

40. The Court cannot dissociate its analysis of the relative harm to the Debtors from Celsius's concurrent request to extend the bar date. As it stands now, Celsius has *no* litigation claim to commence unless it also is allowed to file a late claim against the Debtors in these chapter 11 cases, which alone would disturb the Debtors' and creditors' reliance on the finality of the bar date, in addition to forcing the Debtors to expend resources litigating the claim. The harm to the Debtors is not thus limited to legal fees expended in defense of Celsius's purported preference claim and supporting legal theories but also those fees and resources expended in addressing Celsius's claim, dealing with an altered claim pool, and potentially defending additional requests to file late claims.

41. *Prejudice to creditors of another forum.* Lifting the stay and allowing the action to proceed in another forum would diminish resources that would otherwise go to other creditors. *See In re Residential Cap., LLC*, 501 B.R. 624, 644 (Bankr. S.D.N.Y. 2013) (holding that allowing litigation to proceed in a different forum would prejudice the interest of other creditors because, among other things, "[a]ny litigation costs would diminish the bankruptcy estate"). The Debtors' attorneys and the attorneys for other constituents would have to file appearances in another forum

and potentially research applicable procedural and substantive law governing any proceeding between the Debtors and Celsius outside of these cases.

42. Celsius attempts to gloss over this concern by repeating the refrain that issues relating to the Debtors' assets on the Celsius platforms will be resolved in Celsius's bankruptcy case before another judge of this Court. *See* Mot. ¶ 31. This is misleading, however, because the Wallet Agreement and Amended Wallet Agreement between the Debtors and Celsius contain a mandatory arbitration clause that requires arbitration of "[a]ny civil action or legal proceeding arising out of or relating to" those agreements. *See* Amended Wallet Agreement § 4 (Ex. B) (requiring arbitration under New York law and the rules of the American Arbitration Association). As a result, Celsius's assertion that the Debtors' assets on the "Earn" platform are assets of Celsius's estate must be litigated in arbitration prior to the resolution of Celsius's preference claim. *Id.*; *see also Collins & Aikman Prod. Co. v. Bldg. Sys., Inc.*, 58 F.3d 16, 19 (2d Cir. 1995) (explaining that arbitration clauses must be broadly construed in light of federal policy).

43. *Judicial economy.* Judicial economy is not served here, where the Debtors and Celsius face a circuitous procedural path to resolve the many overlapping issues between them. First, Celsius and the Debtors would need to participate in a private arbitration over the ownership of the Debtors' digital assets on Celsius's platform. Once complete, a judge of this Court would need to invest time to understand the arbitrated claims to determine whether Celsius can meet all of the elements of a preference under Section 547 of the Bankruptcy Code and whether the Debtors possess defenses under that section. From there, potentially yet another judge of this Court would need to adjudicate any objections to the claim the Debtors filed in Celsius's bankruptcy cases and the impact of all prior rulings on that claim. This is the opposite of economical and would

significantly tax judicial resources. *See In re Lehman Bros. Holdings Inc.*, 594 B.R. 33, 53 (Bankr. S.D.N.Y. 2018) (holding that judicial economy is not served by litigation across multiple forums).

44. *Readiness for trial.* This factor weighs against lifting the stay first and foremost because Celsius needed to, but did not, timely file a claim. Courts have denied lifting the automatic stay for litigation that was significantly further along than Celsius’s unfiled claim here, including where actions had already been briefed and pending before the stay came into effect. *See, e.g., Motors Liquidation*, 2010 WL 4630327, at *4 (“the dispositive motions filed in the ERISA suit were pending for over a year before the automatic stay came into effect.”); *In re SquareTwo Fin. Servs. Corp.*, 2017 WL 4012818, at *2 (Bankr. S.D.N.Y. Sept. 11, 2017) (appeal pending when debtors filed for bankruptcy). Here, Celsius admits that any litigation relating to the ownership of the Debtors’ assets on Celsius’s “Earn” platform has not been initiated; in fact, its claim leaves open the possibility that it would seek to pursue additional amounts that have not been identified to date. *See* Mot. ¶ 19 (“Other withdrawals and transfers [by the Debtors] may also be subject to challenge.”). Put simply, both parties would be starting from scratch in any litigation that Celsius were to bring.

45. *Lack of connection with or interference with Voyager’s bankruptcy cases.* Here, there is a clear connection to and interference with the Debtors’ chapter 11 cases should the stay be lifted. The Debtors would need to divert time and resources from the chapter 11 cases to engage in a wholly new proceeding in arbitration and potentially further litigate Celsius’s preference claim in yet another forum. The substance of Celsius’s claim also relates directly to the Debtors’ assets and, if Celsius prevails, would diminish the pool of assets from which creditors may recover—clearly impacting the Debtors’ cases. *Cf. In re Robles*, No. 22-10828 (MG), 2022 WL 3384638, at *5 (Bankr. S.D.N.Y. Aug. 16, 2022) (no interference with bankruptcy case where debtor had no

interest in property at issue in litigation). At the very least, the Debtors would have to hold aside a large reserve pending the outcome of some future litigation between the parties, thereby significantly reducing distributions to other creditors.

46. *Involvement of third parties.* This factor does not support lifting the stay. This factor does not favor lifting the stay the debtor has a direct interest in the underlying dispute, and only favors stay relief where the debtor simply possesses “goods or proceeds” related to the dispute without a substantive interest therein. *Musso v. Hirsch*, 2011 WL 4543225, at *12 (E.D.N.Y. Sept. 29, 2011) (internal quotations omitted). Here, the action is against the Debtors and directly impacts the Debtors’ chapter 11 cases and recoveries to other creditors, as explained previously.

47. *Debtor as fiduciary.* This factor weighs against lifting the stay. Voyager was a customer of Celsius and did not owe them a fiduciary duty. *Cf. In re Robles*, 2022 WL 3384638, at *5 (factor favors lifting stay where debtor is a fiduciary).

48. In total, seven *Sonnax* Factors weigh against lifting the stay, and none justify the relief Celsius seeks. Celsius’s request for relief from the automatic stay should be denied.

Conclusion

49. For the reasons set forth herein, the Debtors respectfully request that the Court enter an order denying the Motion.

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PAUL HASTINGS LLP

Dated: January 17, 2023
New York, New York

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Exhibit G

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UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re:

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 22-10943 (MEW)
)

) (Jointly Administered)
)

**DECLARATION OF MICHAEL C. WHALEN IN SUPPORT OF
DEBTORS' OBJECTION TO MOTION OF CELSIUS NETWORK LLC FOR ORDER (I)
LIFTING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362(D)(1) AND
BANKRUPTCY RULE 4001 AND (II) GRANTING LEAVE TO FILE LATE PROOF OF
CLAIM PURSUANT TO BANKRUPTCY RULES 3003(C) AND 9006(B)(1)**

I, Michael C. Whalen, hereby declare pursuant to section 1746 of title 28 of the United States Code:

1. I am an associate attorney at Paul Hastings LLP. I am attorney in good standing of the bar in the State of Illinois and the bars of the United States District Courts of the Northern

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

District of Illinois and Eastern District of Michigan as well as the United States Courts of Appeals for the 6th and 7th Circuits. My application for admission to practice *pro hac vice* before this Court is being filed simultaneous herewith.

2. I submit this declaration (the “Declaration”)² in support of the Debtors’ objection (the “Objection”) to the Motion of Celsius Network LLC for Order (I) Lifting the Automatic Stay Pursuant to 11 U.S.C. 362(d)(1) and Bankruptcy Rule 4001 and (II) Granting Leave to File Late Proof of Claim Pursuant to Bankruptcy Rules 3003(c) and 9006(b)(1) (the “Motion”).

3. Attached as Exhibit A hereto is a true and correct copy of the Omnibus Wallet Service Agreement among Celsius Network Limited and Voyager, dated June 12, 2020, and which is referred to in the Objection as the Wallet Agreement.

4. Attached as Exhibit B hereto is a true and correct copy of the Assignment and Amendment to the Omnibus Wallet Service Agreement, dated August 19, 2021, and which is referred to in the Objection as the Amended Wallet Agreement.

Dated: January 17, 2023
Chicago, Illinois

/s/ Michael C. Whalen

Michael C. Whalen

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

EXHIBIT A

OMNIBUS WALLET SERVICE AGREEMENT

THIS OMNIBUS WALLET SERVICE AGREEMENT (this "**Agreement**") dated as of 6/12/2020, 2020 (the "**Effective Date**"), is entered into by and between **CELSIUS NETWORK LIMITED**, registered number **11-98-050**, with its registered address at 35 Great St Helen's, London, EC3A 6AP, United Kingdom ("**Celsius**"), and Voyager, with its registered address at 33 Irving Place 3060 New York, NY, 10003 ("**Partner**").

WHEREAS, Celsius owns and operates a proprietary platform which allows Partner's **Users** (as defined below) to gain rewards on the cryptocurrencies in their Wallets (as defined below), or borrow cryptocurrency from Celsius (the "**Services**"), all in accordance with the Terms of Service; and

WHEREAS, Partner is the owner and operator of a secure digital online platform (the "**Platform**") available on the domain: investvoyager.com (the "**Domain**"), which allows Voyager Users to open and manage cryptocurrency brokerage accounts in which they can hold, transfer and exchange certain kinds of cryptocurrency; and

WHEREAS, the Partner wishes to obtain and Celsius wishes to grant Partner a limited, revocable, non-exclusive, non-transferable, non-assignable right and license to use Celsius' proprietary application program interface (the "**API**") to access the Services and the Partner shall provide Partner's Users (as defined below) with the ability to gain rewards on the cryptocurrencies in their wallet (as defined below) ("**Partner's Services**").

NOW THEREFORE, in consideration of the mutual covenants and undertakings hereinafter contained, each of Celsius and Partner (each, a "**Party**" and collectively, the "**Parties**") hereby agree as follows:

Definitions

- 1.1. "**Partner's Users**" refers to users engaged with the Partner and wish to use the Partner's Services through Partner's Platform, including users referred to the Platform by Partner's affiliates and partners. For the avoidance of doubt, such Partner's Users are not and shall not be deemed as Celsius' users and shall not have any commercial arrangement with Celsius solely based on the terms of this Agreement. "**Partner's Wallet**" refers to secure digital cryptocurrency wallets, hosted on Partner's Platform.
- 1.2. "**Terms of Service**" refers to the terms governing the use of the Services, available at <https://celsius.network/terms-of-use/>. The existing terms are to be adjusted by Celsius at its own discretion.

2. Licence

During the period commencing on the Effective Date and for the remainder of the Term (as defined in 5.1 below), and subject to Partner's compliance with the terms and conditions of this Agreement, Celsius agrees to grant Partner a non-exclusive, non-transferable, non-sublicensable, limited, revocable license to use the API to access the Services.

3. Referral Awards

- 3.1. Partner shall be entitled to receive referral awards ("**Referral Awards**") equal to 10% of the rewards generated (also known as a 50/50 revenue split with Celsius) of the average quarterly cryptocurrency amount held by Celsius as result of the Partner depositing cryptocurrency in its Wallet with Celsius (the "**Deposit**"). For this purpose, a cryptocurrency amount shall be calculated as part of the average only in case it was held by Celsius for a period longer than seven (7) days.
- 3.2. The Referral Awards, with respect to each coin type, is calculated quarterly and distributed to the Partner by Celsius, either (i) in the same currency type provided; or (ii) in the form of CEL Tokens at an increased rewards rate (non-US companies only)IM, per the Partner's election, in the first week of each calendar quarter, with respect to the previous quarter's activity, provided such Referral Awards, in the aggregate, are equal to no less than \$2,000 USD (calculated on the first business day of each

calendar quarter) (the "**Minimum Referral Awards**"). If the Referral Awards are equal to or less than the Minimum Referral Awards, such amounts shall be accrued and deferred until such month in which the Awards are equal to or exceed the Minimum Referral Awards. Once the Minimum Referral Awards are met, the payout will occur at the end of the next quarterly pay period.

- 3.3. Following the Effective Date, Celsius shall in accordance with 3.2 above, provide to Partner a statement giving particulars of the transactions completed (if any) by the Partner during the preceding quarter, the amount of the Referral Awards payable to Partner and the calculation or evidence supporting the calculation of such Referral Awards (including a copy of the invoice for the payment of its own fees). If any dispute arises as to the amount of Referral Awards payable by the Celsius to Partner, the same shall be referred to Partner's auditors for settlement and their decision, save in the case of manifest error, shall be final and binding on both Parties.
- 3.4. Transaction costs related to the payment of Referral Awards shall be borne by Partner, i.e. the amounts actually received by it shall consist of the full amount calculated under Section 3.1 above, minus transaction fees on the blockchain. Celsius shall provide Partner with a breakdown showing any transaction fees incurred by Partner.
- 3.5. Partner will pay all sales, use, withholding and other taxes, duties, or fees imposed by any applicable laws and regulations as a result of the Referral Awards it receives under this Agreement.

Responsibilities of the Parties

4. Each Party shall maintain records and books of accounts in accordance with International Financial Reporting Standards.
- 4.1. Partner acknowledges that Celsius will have no direct interaction with Partner's Users, and as such Celsius accepts no liability whatsoever with respect to any Partner's User, other than where such liability is as a result of fraud, willful misconduct or gross negligence of Celsius or its affiliates, resellers, employees or agents.
- 4.2. Partner will comply with any Celsius policies or rules relating to marketing of the Services which Celsius may adopt and inform Partner in writing reasonable time in advance during the Term. Additionally, Partner agrees to the following:
 - 4.2.1. Customer facing product screens must include 'powered by Celsius' branding.
 - 4.2.2. All use of Celsius' logo and name must be in accordance with Celsius' brand kit.
 - 4.2.3. All press, including any blog posts or affiliated content must be pre-approved by the Celsius marketing team.
- 4.3. In the event the Partner does not launch the product in ninety (90) days from Effective date, Celsius may terminate the agreement at their discretion subject to section 4.6.
- 4.4. Partner will be fully and sole responsible for performing (or having a third party perform on behalf of the Partner) any and all necessary "know-your-customer", anti-money laundering and/or any other compliance checks Partner reasonably requires, regarding Partner's Users, including verification of any incoming documentation regarding Partner's Users and their respective source of funds. The Partner acknowledges that Celsius will be relying on the successful completion of all compliance checks to be done in accordance with the Partner's KYC/AML policy to be approved by Celsius as part of the opening of the Partner's omnibus account with Celsius, while the KYC/AML policy may be revisited by Celsius from time to time, based on its sole discretion upon any amendments thereto.
- 4.5. The Parties agree that in the event that the Partner's Users are deemed or claimed to be deemed Celsius' users by any competent authority, the Partner undertakes to provide Celsius with the respected Partner's Users' documentation and information upon request.
- 4.6. Each Party will comply with all applicable laws and regulations in performing under this Agreement, including, without limitation, relating to "know-your-customer", anti-money laundering, anti-bribery

and corruption, sanctions, and will acquire and maintain any required licenses thereof. Partner will not refer to the Partner's Services any Partner's User that involves high risk of money laundering, terror financing or otherwise involvement in any illegal activities. Partner shall ensure no Partner's User is subject to any sanctions regime or is listed on any 'black list' of any government or international body, or in any way engages in any adult, obscene, pornographic, defamatory, libelous, infringing, abusive, or illegal activity, or any activity that promotes hate or discrimination, facilitates the sale of firearms or illegal drugs, or that participates or encourages participation in, illegal activities. Partner shall provide Celsius with any and all documents, policies, procedures, etc. as Celsius may require, demonstrating Partner's ongoing compliance with the aforementioned.

- 4.7. Each Party represents and warrants that neither it nor any of its affiliates or officers, directors, brokers or agents (i) has violated any applicable anti-terrorism laws, (ii) is publicly identified on the most current list of "Specially Designated Nationals and Blocked Persons" published by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo programs, (iii) conducts any business or engages in making or receiving any contribution of goods, services or money to or for the benefit of any person described in clauses (ii) above, (iv) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any anti-terrorism law, or (v) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any anti-terrorism law. To the extent Partner or any of its affiliates or officers, directors, brokers or agents violates (i) through (vii) or becomes aware of any Partner's User having violated or potentially violated (i) through (vii), Partner will immediately notify Celsius in writing as soon as it becomes aware of such violations. Each Party reserves the right to research and investigate the other Party and its activities and, at their own discretion, determine whether or not any of the aforementioned practices are being employed. Without limiting any other remedy available to Celsius hereunder or pursuant to any applicable law, either Party may immediately terminate this Agreement at any time for any violation by the other Party of the foregoing representations, warranties and covenants and all Referral Awards will be cancelled and forfeited.
- 4.8. Partner acknowledges that Celsius reserves the right to update the API infrastructure for security and scalability purposes and the Partner consents to updates without prior notice.

5. Term and Termination

- 5.1. This Agreement will continue for one (1) year (the "**Initial Term**") and may be renewed subject to the mutual agreement of both Parties (the "**Term**"), which may contain new terms and conditions.
- 5.2. Either Party may terminate this Agreement for convenience at any time, upon thirty (30) days' prior written notice to the other Party.
- 5.3. Each Party may terminate this Agreement with immediate effect by delivering notice of the termination to the other Party, if the other Party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or breach continues for a period of fifteen (15) days after the injured Party delivers notice to the breaching Party reasonably detailing the breach.
- 5.4. If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this Agreement with immediate effect.
- 5.5. Subject to clause 5.6 below, on termination or expiration of this Agreement, each Party's rights and obligations under this agreement will cease immediately.
- 5.6. Sections 6, 7, 8, 9 and 10 will survive termination or expiration of this Agreement for any reason.
- 5.7. Upon termination of this Agreement, the Parties undertake all to use all reasonable best endeavours to agree upon and set up a migration plan for the Users.

6. **Intellectual Property Rights**

The Parties acknowledge and agree that neither Party will hold any intellectual property rights in the other Party's products including, but not limited to, copyright and trademark rights. Each Party agrees not to claim any such ownership in the other Party's intellectual property at any time prior to, during, or after termination or expiration of this Agreement.

7. **Disclaimer Of Warranty.**

CELSIUS OFFERS NO WARRANTY UNDER THIS AGREEMENT AND TO THE EXTENT ALLOWED BY APPLICABLE LAW ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, OR WARRANTY OF NON-INFRINGEMENT ARE DISCLAIMED.

8. **Indemnification**

- 8.1. Subject to 8.2 below, Partner will indemnify, defend, and hold harmless Celsius, its affiliates, resellers, employees and agents from and against all liabilities, damages, and costs (including reasonable attorneys' fees) arising out of any claim, demand, suit or proceeding by a third party resulting from (i) Partner's breach of this Agreement, (ii) any act or omission of Partner on anyone on Partner's behalf, or (iii) Partner's breach of applicable law, other than where such liabilities, damages or costs are as a result of fraud, willful misconduct or negligence of Celsius or its affiliates, resellers, employees or agents.
- 8.2. In the event of breach of contractual obligations by one Party, its affiliates, resellers, employees and agents, the Party shall only be liable towards the other Party for typically foreseeable and occurring damages within this Agreement.
- 8.3. Neither Party shall under any circumstances whatever to be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for (i) any loss of profit, sales, revenue, or business, (ii) loss of anticipated savings, (iii) loss of or damage to goodwill, (iv) loss of agreements or contracts, (v) loss of use or corruption of software, data or information, (vi) any loss that is an indirect or secondary consequences of any act or omission of the Party in question.

9. **Confidential Information**

- 9.1. "**Confidential Information**" shall mean any and all information disclosed by one Party ("**Disclosing Party**") to the other ("**Receiving Party**") regarding past, present, or future marketing and business plans, customer lists, lists of prospective customers, technical, financial or other proprietary or confidential information of the Disclosing Party, formulae, concepts, discoveries, data, designs, ideas, inventions, methods, models, research plans, procedures, designs, formulations, processes, specifications and techniques, prototypes, samples, analyses, computer programs, trade secrets, data, methodologies, techniques, non-published patent applications (together with its attached documents and that such application has been submitted) and any other data or information, as well as improvements and know-how related thereto. Confidential Information includes all tangible materials which contain the information described above, including without limitation, written or printed documents and electronic media. Confidential Information does not include information which as shown by written records, (i) is or becomes generally known or available through no act or failure to act by the Receiving Party; (ii) is already known by the Receiving Party without breaching any confidentiality obligation; (iii) is rightfully furnished to the Receiving Party by a third party without restriction or disclosure; (iv) is independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party; (v) is released pursuant to a binding order of a government agency or a court so long as prior to any such release the Receiving Party provides the Disclosing Party with a notice so that the Disclosing Party may seek a protective order or other appropriate remedy. In any such event described in clause (v) above, the Receiving Party will

disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed. Any disclosure pursuant to the provisions of clause (v) above shall not permit the Receiving Party to issue any press release or otherwise discuss or further disseminate the information required to be disclosed.

- 9.2. The Receiving Party understands that the Disclosing Party has disclosed or may disclose Confidential Information during the Term of this Agreement or in connection thereto. The Receiving Party agrees: (i) to take commercially reasonable precautions to protect such Confidential Information; (ii) not to use (except as expressly permitted herein) or divulge to any third party any such Confidential Information; (iii) protect and safeguard the Confidential Information against any unauthorized use, disclosure, transfer or publication with at least the same degree of care as it uses for its own confidential or proprietary information, but in no event with less than reasonable care; (iv) to take appropriate measures with all persons acting on its behalf to ensure that such persons are bound by a like covenant of confidentiality, and informing such persons that such Confidential Information shall not be disclosed except as provided herein; and (v) notify Disclosing Party upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement. Whenever requested by the Disclosing Party or upon the expiration or termination of this Agreement, each Party will immediately either return to the other or, at Disclosing Party's request, destroy all manifestations of Disclosing Party's Confidential Information.

10. **Modification**

- 10.1. Celsius reserves the right, in its sole discretion, to modify any of the terms and conditions contained in this Agreement or any related document upon notice to Partner. If a material modification is unacceptable to Partner, Partner's sole and exclusive recourse will be to terminate this Agreement within seven (7) days following receipt of such notice. Partner's continued performance of any duties under this Agreement beyond the seven (7) days following Company's change notice will be deemed Partner's binding acceptance of the change.
- 10.2. Without derogating from the generality of Section 10.1 above, Celsius may, at its sole discretion and with no prior notice, cease or suspend the provision of the Services.

11. **Miscellaneous**

- 11.1. Either Party may enforce any provision of this Agreement by obtaining equitable relief in addition to all other remedies at law or under this Agreement. The non-breaching Party's remedies at law for a breach of any provision of this Agreement may be inadequate and such Party may suffer irreparable harm from any such breach. The rights and remedies of the non-breaching Party under this Agreement are cumulative and not alternative and are in addition to any other right or remedy set forth in any other agreement between the Parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
- 11.2. All notices or other communications hereunder shall be in writing and given in person, by registered mail, by an overnight courier service which obtains a receipt to evidence delivery, or by facsimile or email transmission with written confirmation of receipt, addressed to the address set forth in the preamble to this Agreement or to such other address as any Party hereto may designate to the other in accordance with the aforesaid procedure. All notices and other communications delivered in person or by courier service shall be deemed to have been given upon delivery, those given by facsimile or email transmission shall be deemed given on the business day following transmission, and those sent by registered mail shall be deemed given three calendar days after posting.
- 11.3. Each Party to this Agreement will be excused for delays in performing or from its failure to perform hereunder (other than payment delays) to the extent that the delays or failures result from causes beyond the reasonable control of such Party; provided that, in order to be excused from delay or failure to perform, such Party must act diligently to remedy the cause of the delay or failure.

- 11.4. Except as provided herein, neither Party may assign or otherwise transfer any of its rights under this Agreement, or delegate any of its obligations or duties under this Agreement, without the other Party's express prior written consent. Notwithstanding anything to the contrary having provided the other party with at least 60 days' notice, either Party may assign this Agreement (i) to any affiliate of that Party (each, an "**Affiliate**") or (ii) to any third party in connection with the sale of all or substantially all of that Party's business or assets, whether by merger, sale of assets, sale of stock, or otherwise without the other Party's prior consent. Subject to the foregoing, this Agreement will be binding upon each Party and its successors and permitted assigns.
- 11.5. This Agreement shall be interpreted, construed and enforced in accordance with the laws of England and Wales without regard to principles of conflict of laws. Any civil action or legal proceeding arising out of or relating to this Agreement will be brought under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall be held in the English language and the place of arbitration shall be London, England. The arbitrator's decision will be final and binding upon the Parties. All arbitration costs and expenses, including the arbitrator's fees, will be borne equally by the Parties, unless otherwise awarded by the arbitrator in his discretion. Each Party hereby waives any forum non convenience claim in connection with said arbitration or any similar objection or any claims against the enforcement of the arbitrator's ruling in any applicable jurisdiction. If a court of competent jurisdiction should find any part of this Agreement invalid, that provision will be omitted and the remainder of this Agreement remains in effect and be construed so as to best effectuate the original intent and purpose of this Agreement.
- 11.6. No waiver by either Party of any breach of this Agreement will constitute a waiver of any other breach of the same or other provisions of this Agreement. No waiver by either Party will be effective unless made in writing and signed by an authorized representative of that Party.
- 11.7. If any provision in this Agreement is invalid or unenforceable in any circumstance, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby.
- 11.8. This Agreement constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between Celsius and Partner. Amendments to this Agreement will be effective only if written and signed by Celsius and Partner.
- 11.9. Each Party shall act only as an independent contractor and not as an employee, agent, servant, or representative of the other. The Parties' relationship will not be construed to be one of employment, joint venture, agency or similar relationship. Neither Party will have, nor will it represent that it has, any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other Party or in its name, except as expressly provided otherwise herein. Neither Party shall have any authority to transact business or make any commitments on behalf of the other unless expressly authorized in writing by an officer of such other Party.
- 11.10. This Agreement may be executed and delivered by the Parties in counterparts (each of which will be considered for all purposes an original) and by facsimile or by e-mail transmission in PDF format, and when a counterpart has been executed and delivered by each of the Parties, by facsimile, e-mail in PDF format or otherwise, all such counterparts and facsimiles will together constitute one agreement.

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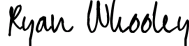
IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the Effective Date:

DocuSigned by:

A7E625D241DA4DE...

Celsius Network Limited

Name: Camilla Churcher
Title: Head of Business Development

DocuSigned by:

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Name: Ryan Whooley
Title: Head of Trading & Treasury

[SIGNATURE PAGE OF SERVICES AGREEMENT]

Attachment A

Third-Party Reliance Terms and Conditions

These Terms and Conditions are to be read in conjunction with the Service Agreement, which, by its terms, incorporates these by reference or have them printed on the back or attached to them.

1. Definitions:

1.1. In these Terms and Conditions, the following terms shall have the meanings ascribed to them below:

"**AML**" means anti-money laundering and counter-terrorism financing;

"**Celsius**" means Celsius Network LTD. (UK), whose address is at 35 Great St. Helen's, London, United Kingdom, EC3A 6AP;

"**Identifying Information**" means the customer's full name, date of birth, citizenship, address and ID number.

"**Partner's Users**" means users engaged with the Partner and wish to use the Services through Partner's Platform, including users referred to the Platform by Partner's affiliates and partners. For the avoidance of doubt, such Partner's Users are not and shall not be deemed as Celsius' users and shall not have any commercial arrangement with Celsius solely based on the terms of this Agreement. Partner's Users are customers of Partner who have been approved by Partner following KYC and AML procedures for use of the Partner's services.

"**Partner**" means _____, whose address is at _____.

"**KYC**" means Know-your-Customer;

"**KYC Documents**" are all KYC and AML due diligence documents and information collected by Partner for each Partner's Users, and maintained by Partner, as required under applicable AML laws and/or by any competent authority;

"**Parties**" means Celsius and Partner;

2. Terms and Conditions:

2.1. Partner hereby agrees and confirms, in relation to each Partner's User that:

2.1.1. Partner has concluded KYC and AML due diligence measures in relation to this Partner's User, and has obtained and maintained all the information and documents in a manner and form that complies with its AML Policy and applicable law, including but not limited to, the Identifying Information, one form of government-issued photographic identification and proof of verification of the Partner's User's residential address by a document that satisfies Partner's own regulatory requirements.

2.1.2. Partner confirms that it has in place a system of identifying whether a Partner's User is a politically exposed person ("PEP") or an immediate family member or close associate of a PEP. Partner shall promptly notify Celsius, in writing, when it identifies a Partner's User as a PEP (or being connected to a PEP) and acknowledges that such customers must be deemed to present high risk and subject to additional KYC due diligence documents and requirements.

2.1.3. Partner confirms it checks, on acceptance of a customer and regularly from time to time thereafter, all persons associated with any Partner's User against international sanction lists as issued (and updated) including, but not limited to, by the United Nations Security Council and the United States Office of Foreign Assets Control (a/k/a OFAC"). In case of any Partner's User or related person appearing on a sanction list, Partner shall inform Celsius with immediate effect.

2.1.4. Partner confirms that it has a business relationship with the Partner's User and that it has no knowledge or suspicion that any Partner's User is involved in money laundering, terrorism financing or proliferation financing. If this should change at any time, Partner shall immediately notify Celsius of such knowledge and or suspicions, in writing.

2.1.5. Partner consents to Celsius relying on the performance of Partner's identification and record-keeping measures in relation to each Partner's User.

2.1.6. Immediately upon introducing any Partner's Users, Partner shall provide Celsius with such Partner's User's Identifying Information through the API.

2.1.7. Partner undertakes to maintain the KYC Documents for at least five years after the termination of the Service Agreement or the termination of Partner's relationship with the Partner's User for any reason (whichever is later) or for such longer period as is required pursuant to applicable laws.

2.1.8. Partner undertakes to provide Celsius with all KYC Documents without delay and, in any case, within forty-eight (48) hours of Celsius requesting the same. This undertaking to provide documents on request will extend for a period of five years from the termination of the Service Agreement or the termination of Partner's relationship with the Partner's User for any reason (whichever is later) or for such longer period as is required pursuant to applicable laws.

2.1.9. In the event of the termination of Partner's relationship with Celsius as established pursuant to the Service Agreement, Partner undertakes to provide to Celsius all the KYC Documents maintained by Partner in respect of each Partner's User within seven (7) days of such termination.

2.1.10. Partner confirms that it is permitted to provide Celsius with the KYC Documents within the timeframes specified in paragraphs 2.1.6 and 2.1.8 above under applicable laws and regulations.

2.2. Partner represents and warrants to Celsius that:

2.2.1. All information provided by Partner in respect of the Partner's Users at any time, shall be true and accurate, and Celsius will rely on the accuracy of this information in providing its services;

- 2.2.2. Partner is not bound by any data protection, secrecy or other laws which would restrict or prohibit its ability to provide Celsius with the KYC Documents, the Identifying Information and any other relevant information as provided herein;
- 2.2.3. Partner has obtained from the Partner's User full consent to provide the KYC Documents, the Identifying Information and any other relevant information to Celsius pursuant to paragraphs 2.1.6 and 2.1.8 above; and
- 2.2.4. To the extent that Partner uses any third-party service providers for any KYC/AML related purpose, Partner has full authority to require from such third-party providers any and all information and documentation to be provided to Celsius hereunder.
- 2.3. Partner undertakes to provide Celsius, each year for the duration of Partner's relationship with Celsius, with a letter confirming Partner's representations and warranties herein.
- 2.4. Partner undertakes to immediately inform Celsius in writing of any change in applicable laws or practices which may prohibit or restrict its ability to provide Celsius with the KYC Documents, the Identifying Information and any other relevant information as provided herein.
- 2.5. Partner acknowledges that these Terms and Conditions shall be valid in respect of every Partner's User until the lapse of five years from the latter of: (1) the termination of the Service Agreement; or (2) the termination of Partner's relationship with the Partner's User for any reason.
- 2.6. Partner undertakes to immediately notify Celsius (in writing) of any legal, criminal or regulatory action taken against any Partner's User or against Partner by any professional body or authorized body that regulates, supervises and monitors Partner, whether the license, authorization, approval or membership has been suspended, canceled, revoked or withdrawn or in any other way restricted.
- 2.7. Partner shall notify Celsius immediately if any evidence of the verification of the identity of a Partner's User in Partner records proves unsatisfactory.
- 2.8. In the event of the termination of Partner's business relationship with a Partner's User, for whatever reason, Partner shall within seven (7) days:
- 2.8.1. Provide Celsius with the KYC Documents maintained by Partner in respect of the Partner's User; or
- 2.8.2. Notify Celsius in writing of the arrangements, satisfactory to Celsius that Partner will put in place to ensure that Celsius will be able to access the KYC Documents of such Partner's User whenever requested.
- 2.9. Partner shall indemnify Celsius against all actions, claims, costs (including all legal costs), demands, expenses, liabilities and proceedings which may be taken or made or incurred by Celsius directly pursuant to or in connection with its reliance on the representations and warranties contained in these Terms and Conditions.

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IN WITNESS WHEREOF, the Parties have signed these Terms and Conditions effective and thereby incorporated in the Service Agreement on the Service Agreement's effective date:

Celsius Network Limited

Name:

Title:

Name:

Title:

EXHIBIT B

ASSIGNMENT AND AMENDMENT TO OMNIBUS WALLET SERVICE AGREEMENT

THIS ASSIGNMENT AND AMENDMENT TO OMNIBUS WALLET SERVICE AGREEMENT (this “**Amendment**”) dated August 19, 2021 is made by and between Celsius Network Limited (“**Celsius UK**”), Celsius Network LLC (“**Celsius US**”), Celsius EU UAB (“**Celsius EU**”) and Voyager Digital LLC, (“**Partner**”) (each, a “**Party**” and collectively, the “**Parties**” and Partner and Celsius UK, the “**Original Parties**”). Any capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

WHEREAS, the Original Parties hereto entered into that certain Omnibus Wallet Service Agreement dated as of 06/12/2020 (the “**Agreement**”);

WHEREAS, in connection with Celsius UK, Celsius US and Celsius EU migrating the provision of certain services from Celsius UK to Celsius US and Celsius EU (the “**Migration**”), Celsius UK wishes to assign to Celsius US and Celsius EU all of its rights, title and interest under the Agreement and Celsius US and Celsius EU wish to assume all of Celsius UK’s duties and obligations under the Agreement;

WHEREAS, in connection with the Migration, the Parties now desire to amend the Agreement regarding contractual modifications as further set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and obligations contained herein, the Parties hereto agree as follows:

1. Assignment and Assumption. Pursuant to Section 11.4 of the Agreement, Celsius UK hereby assigns, grants, conveys and transfers to Celsius US and Celsius EU all of Celsius UK's right, title and interest in and to the Agreement. Celsius US and Celsius EU hereby accept such assignment and assume all of Celsius UK's duties and obligations under the Agreement and agree to pay, perform and discharge, as and when due, all of the obligations of Celsius UK under the Agreement accruing on and after the date hereof. Partner hereby consent to the foregoing assignment and assumption and waive, in this instance, their rights to receive 60 days notice of the foregoing assignment from Celsius UK to its affiliates, Celsius US and Celsius EU.
2. Terms of Use. Partner understands and acknowledges that, in connection with the Migration, the Services will be subject to updated terms of use with Celsius US and Celsius EU, and that Celsius US and Celsius EU may, at any time and in their sole discretion, modify their terms of use as available at their website (<http://celsius.network>). Celsius US and Celsius EU shall endeavor, but shall not be obligated, to provide Partner advance notice of any updates or changes to Celsius US’ and Celsius EU’s terms of use.
3. Extension of Term: The Parties agree to extend the Term for an additional period of two (2) years from the date of this Amendment. All provisions of the Agreement that relate to the Term and termination of the Agreement remain in full force and effect.
4. Amendment to Section 11.5: Section 11.5 of the Agreement is hereby amended by deleting the present section in its entirety and substituting the following in lieu thereof:

“This Agreement shall be interpreted, construed and enforced in accordance with the laws of state of New York without regard to principles of conflict of laws. Any civil action or legal proceeding arising out of or relating to this Agreement will be brought under the Rules of the American Arbitration Association by one arbitrator appointed in accordance with the said Rules. The arbitration shall be held in the English language and the place of arbitration shall be Manhattan, New York. The arbitrator’s decision will be final and binding upon the Parties. All arbitration costs and expenses, including the arbitrator’s fees, will be borne equally by the Parties, unless otherwise awarded by the arbitrator in his discretion. Each Party hereby waives any forum nonconvenience claim in connection with said arbitration or any similar objection or any claims against the enforcement of the arbitrator's ruling in any applicable jurisdiction. If a court of competent jurisdiction should find any part of this Agreement invalid, that provision will be omitted and the remainder of this Agreement remains in effect and be construed so as to best effectuate the original intent and purpose of this Agreement.”

This Amendment to the Agreement shall be effective as of the date of this Amendment. Except as hereby modified, the Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party to this Amendment has caused it to be executed on the date first written above.

CELSIUS NETWORK LIMITED

DocuSigned by:
By: Roni Cohen Pavon
C9BBF4BD9B5D482...
(Signature)

Name: Roni Cohen Pavon
Title: Chief Revenue Officer
Email: Roni@celsius.network

CELSIUS NETWORK LLC

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CELSIUS EU UAB

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Voyager Digital LLC

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A3026FFC8D8B45A...
(Signature)

Name: Evan Psaropoulos_

Title: CFO

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In the Matter Of:

Re CELSIUS NETWORK LLC, et al.

CHRISTOPHER FERRARO

November 21, 2022



Confidential

Christopher Ferraro - November 21, 2022

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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In re:

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Chapter 11

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CELSIUS NETWORK LLC, et al.

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Case No. 22-10964

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VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF

15

CHRISTOPHER JAMES FERRARO

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New York, New York

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Monday, November 21, 2022

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Reported Stenographically By:

24

PATRICIA A. BIDONDE

Registered Professional Reporter

Realtime Certified Reporter

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JOB#: 2022-872581

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Christopher Ferraro - November 21, 2022

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November 21, 2022
9:09 a.m.

Confidential Videoconference
Video-Recorded Deposition of
CHRISTOPHER JAMES FERRARO, held at
the offices of Kirkland & Ellis LLP,
601 Lexington Avenue, New York, New
York, before Patricia A. Bidonde,
Stenographer, Registered
Professional Reporter, Realtime
Certified Reporter, Certified
eDepoze Court Reporter, Notary
Public of the States of New York,
New Jersey, and Connecticut.

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Christopher Ferraro - November 21, 2022

3

A P P E A R A N C E S

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

11

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Christopher Ferraro - November 21, 2022

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Christopher Ferraro - November 21, 2022

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A P P E A R A N C E S (CONTINUED)

PRO SE CREDITORS VIA VIDEOCONFERENCE:

CAMERON CREWS

KULPREET KHANUJA

IMMANUEL HERRMANN

NICOLE BARSTOW

JARNO OBERG

JEREMY COHEN HOFFING

VICTOR UBIERNA DE LAS HERAS

DANIEL FRISHBERG

THOMAS DIFIORE, UCC Co-Chair

MICHAEL MORRIS

MIKE G

ALSO PRESENT:

CHRISTIAN BIDONDE, Legal Video Specialist

Via Videoconference:

AYDALINE GARCIA, Zoom Tech

- - -

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IT IS HEREBY STIPULATED AND
AGREED, by and between the attorneys
for the respective parties, that all
objections, except as to the form of
the questions, shall be reserved to
the time of the trial.

IT IS FURTHER STIPULATED AND
AGREED that the within examination
may be signed and sworn to before
any Notary Public with the same
force and effect as if signed and
sworn to before the court.

IT IS FURTHER STIPULATED AND
AGREED that the filing of the
original transcript of the
examination is waived.

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Christopher Ferraro - November 21, 2022

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P R O C E E D I N G S

- - -

THE VIDEOGRAPHER: We are now
on the record. The time is
9:09 a.m. on November 21, 2022.
Audio and video recording will
continue to take place until all
parties agree to go off the record.
Please note that microphones are
sensitive and may pick up whispering
and private conversations.

This is the video-recorded
deposition of Christopher Ferraro in
the matter of In re Celsius Network,
et al. This deposition is being
held at Kirkland & Ellis, New York,
New York.

My name is Christian Bidonde.
I am the legal video specialist. On
behalf of Lexitas. The certified
stenographer is Patricia Bidonde on
behalf of Lexitas.

Counsel will state their

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Christopher Ferraro - November 21, 2022

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1
2 appearances for the record and all
3 those parties on Zoom, except for
4 those speaking, will be noted for
5 the record. Then the certified
6 stenographer will swear in the
7 witness.

8 MR. HERSHEY: Sam Hershey from
9 White & Case on behalf of the
10 official committee of unsecured
11 creditors.

12 MR. WOFFORD: You also have
13 Keith Wofford from White & Case on
14 behalf of the official committee.

15 MR. McCARRICK: T.J.
16 McCarrick, Kirkland & Ellis, on
17 behalf of the debtors.

18 MS. CORNELL: You have Shara
19 Cornell on behalf of the office of
20 the United States Trustee and Mark
21 Bruh.

22 MR. CREWS: Cameron Crews, pro
23 se creditor.

24 MR. HERRMANN: Immanual
25 Herrmann, pro se creditor.

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Christopher Ferraro - November 21, 2022

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MR. ADLER: David Adler from
McCarter English on behalf of
certain borrowers. Can everyone
hear me?

THE VIDEOGRAPHER: Yes.

MR. ADLER: Thank you.

MS. WESTOVER YANEZ: Melanie
Westover Yanez from Milbank for
Series B Preferred Holders.

MS. SUTHERLAND-SMITH: Kathryn
Sutherland-Smith of White & Case for
the Official Committee of Unsecured
Creditors.

MS. JONES: Elizabeth Jones of
Kirkland & Ellis on behalf of the
debtors.

C H R I S T O P H E R F E R R A R O, called
as a witness, having been duly sworn by
a Notary Public, was examined and
testified as follows:

EXAMINATION BY

MR. HERSHEY:

Q. Okay. Good morning, Mr. Ferraro.
My name is --

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Christopher Ferraro - November 21, 2022

18

1 C. Ferraro - Confidential

2 A. Good morning.

3 Q. Morning. My name is Sam Hershey.

4 As I said, I'm an attorney at White & Case. I
5 represent the official committee of unsecured
6 creditors in the Celsius bankruptcy
7 proceeding.

8 I'll be asking you some questions
9 this morning, and I will not be the only party
10 asking questions. As you're likely aware, we,
11 sort of, divided the deposition off where I'll
12 start and then I'll pass it off, I believe, to
13 the United States Trustee. And then other
14 parties as well will get to ask you questions.

15 I've been allotted three of the
16 seven hours to ask you questions. I don't
17 think I'm going to use all that time. I'd
18 rather have you out there trying to reorganize
19 this company and return value to customers,
20 but I do have some questions for you.

21 And before I start, I'm not in the
22 room with you, so I just want to be sure, is
23 there an attorney with you who will be
24 defending you during this deposition?

25 A. Yes.

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Christopher Ferraro - November 21, 2022

19

1 C. Ferraro - Confidential

2 Q. And who is that attorney?

3 A. T.J., right to the left of me.

4 Q. T.J. McCarrick?

5 A. Yes, sir.

6 Q. Okay.

7 MR. HERSHEY: Good morning,

8 Mr. McCarrick.

9 MR. McCARRICK: Good morning,

10 Mr. Hershey.

11 Q. So before I start, Mr. Ferraro,
12 I'll just ask you a few preliminary questions.

13 MR. McCARRICK: Actually --

14 Q. Have you ever --

15 MR. McCARRICK: Mr. Hershey --

16 Q. Oh, okay.

17 MR. McCARRICK: Yeah,

18 Mr. Hershey, just before we start,

19 I'd like to designate the entire

20 transcript confidential under the

21 terms of the protective order. No

22 information discussed during the

23 deposition can be recorded and/or

24 publicly disclosed, whether orally,

25 on Twitter, by podcast, or other

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Christopher Ferraro - November 21, 2022

20

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2 means.

3 The only individuals,
4 entities, agencies, et cetera, that
5 are entitled to participate in this
6 deposition or have knowledge of its
7 contents are those who provided
8 prior notice that they would attend
9 or participate and who are bound by
10 the terms of the protective order.

11 So if there's anyone present
12 virtually or in person who that's
13 not the case for, they should log
14 off now. We don't want an issue
15 with folks live-streaming today's
16 deposition, commenting about the
17 testimony, or holding a public
18 discussion about it with anyone who
19 hasn't signed the protective order.

20 We're happy to meet and confer
21 on the back end, I should say, about
22 dedesignating parts of the
23 transcript. We expect there's going
24 to be plenty that's not
25 confidential, but the only way for

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2 us to protect our rights in the
3 first instance is to designate it
4 all at the outset.

5 And with that, all you, Sam.

6 MR. HERSHEY: Thank you,
7 Mr. McCarrick.

8 BY MR. HERSHEY:

9 Q. Before I start, Mr. Ferraro, I'm
10 going to ask you a few preliminary questions,
11 the first of which is: Have you ever been
12 deposed before?

13 A. No, sir.

14 Q. Okay. So I'm just going to go
15 over some ground rules on the assumption that,
16 having never been deposed, you may not be
17 completely familiar with how depositions work.

18 So the first is: You understand
19 that you're testifying under oath today.
20 Right?

21 A. Yes, sir.

22 Q. And that means that by your oath,
23 you're going to tell the full truth today.
24 Right?

25 A. Yes.

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Christopher Ferraro - November 21, 2022

22

1 C. Ferraro - Confidential

2 Q. Is there any reason why you would
3 not be able to testify truthfully today?

4 A. No.

5 Q. Okay. A few more ground rules.
6 If you don't understand any of the questions I
7 ask you, please feel free to ask me to clarify
8 it. I won't be offended.

9 Sometimes in depositions questions
10 are made up on the fly, and it may be that the
11 question I pose to you is not comprehensible.

12 Does that make sense?

13 A. Yes.

14 Q. Okay. And if you don't ask me to
15 clarify a question, I'm going to assume that
16 you understand. Is that fair?

17 A. Yes.

18 Q. Okay. We can take as many breaks
19 as you want to take during the deposition. It
20 is not my goal to trap you here. The only
21 thing I ask is that if there's a question
22 pending -- in other words, if I ask you a
23 question and you haven't answered it -- that
24 you answer that pending question, then we can
25 take a break. Is that fair?

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2 A. Yes.

3 Q. Okay. All of your answers have to
4 be verbal. There's a court reporter in the
5 room, and so if you nod or make some other
6 nonverbal cue, it won't get picked up by the
7 transcript. So please make sure always to say
8 "yes" or "no" or any other verbal response the
9 court reporter can record.

10 Does that make sense?

11 A. Yes.

12 Q. And then the last thing -- and
13 this is especially important given that I'm
14 questioning you by Zoom -- let's do our best
15 not to talk over each other. So please make
16 sure to let me answer my question -- I mean,
17 ask my question, and I will make sure to let
18 you answer my question before I start talking.

19 Does that work?

20 A. Yes.

21 Q. Okay. So tell me --

22 MR. McCARRICK: Mister --

23 Mr. Hershey, just one more thing. I
24 just wanted to inform you, since
25 you're not in the room, Mr. Ferraro

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Christopher Ferraro - November 21, 2022

24

1 C. Ferraro - Confidential
2 has a clean copy of his declaration
3 in front of him.

4 MR. HERSHEY: Perfect.

5 MR. McCARRICK: Just wanted to
6 let you know that.

7 MR. HERSHEY: Great. Thank
8 you very much. And soon enough,
9 I'll be offering that as
10 Exhibit Number 1. So I appreciate
11 that.

12 BY MR. HERSHEY:

13 Q. Mr. Ferraro, how did you prepare
14 for this deposition?

15 A. I prepped with my legal advisors,
16 I read the related motions and declarations on
17 this specific item.

18 Q. Okay. So you say you "prepped
19 with your advisors." Who are the advisors
20 you're referring to?

21 A. Kirkland & Ellis, my legal
22 advisors --

23 Q. And who at Kirkland -- sorry. I
24 didn't mean to cut you off. Go ahead.

25 A. My legal advisors.

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Christopher Ferraro - November 21, 2022

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2 Q. Okay. Who at Kirkland & Ellis?

3 A. Predominantly T.J.

4 Q. Anyone else?

5 A. There was a handful of associates.

6 I don't remember their names off the top of my
7 head.

8 Q. Okay. And how many times did you
9 and Mr. McCarrick conduct a prep session for
10 this deposition?

11 A. We did two, two prep sessions.

12 Q. And when -- and when were those?

13 A. One was on Friday, I believe, and
14 the other was Saturday of this week.

15 Q. And how long was each of those
16 sessions?

17 A. One hour, I believe, was the first
18 session and about three hours was the second
19 session.

20 Q. Got it. Were there any other
21 phone calls or any other prep sessions with
22 Mr. McCarrick besides those two that you
23 mentioned?

24 A. Not that I recall.

25 Q. And you said that you reviewed the

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Christopher Ferraro - November 21, 2022

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2 declarations and the motion relevant to this
3 present dispute. Is that correct?

4 A. Yes.

5 Q. Okay. And so when you say "the
6 declarations," what documents specifically are
7 you referring to?

8 A. So my declaration, Oren
9 Blonstein's declaration, the motion to sell
10 stablecoins, and Alex Mashinsky's declaration
11 where the terms of use were listed out.

12 Q. Got it. Did you review any other
13 documents in preparation for today's
14 deposition?

15 A. Not off the top of my head.

16 Q. Okay. I want to talk a bit about
17 your background. Can you describe your
18 educational background for me, starting with
19 the college.

20 A. Yeah. I went to the University of
21 Washington in Seattle. I studied at two
22 different schools: One, the school of
23 economics, I got a bachelor of arts in
24 economics; and I also got a bachelor of arts
25 in the business school with concentrations in

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Christopher Ferraro - November 21, 2022

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2 accounting and finance.

3 Q. Okay. How about after that?

4 A. No. I went straight into work.

5 Q. Got it. So you had no graduate
6 degree?

7 A. No graduate degree.

8 Q. Any professional certification of
9 any kind?

10 A. I did pass the certified public
11 accountant's exam back in 1999.

12 Q. And so are you a CPA?

13 A. I was but I have not fulfilled my
14 credits because I am not in that field.

15 Q. Got it.

16 A. So I am not in good standing, yup.

17 Q. Okay. Thank you. And so you say
18 that after college you went right to work.

19 Where did you go to work after college?

20 A. I went to work for Arthur Andersen
21 in their audit and insurance practice in
22 Seattle. I audited not-for-profit healthcare
23 providers.

24 Q. Okay. And how about after that?

25 A. I was there for about two and a

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Christopher Ferraro - November 21, 2022

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2 half to three years. And after that, I went
3 to Bank One in Phoenix, Arizona.

4 Q. Okay. You can continue.

5 A. Yeah, and I was at Bank One, which
6 got acquired by JPMorgan Chase. And I was
7 there for almost 18 years.

8 Q. And what was your last position at
9 JPMorgan Chase before you left?

10 A. Head of financial analysis, which
11 included, effectively, financial planning and
12 analysis for global -- so for the entire firm,
13 as well as I had numerous, kind of, roles
14 within the finance organization and projects,
15 including automation, you know, creating new
16 models, developing -- stress-testing was big
17 at the point in time when I was at JPMorgan.
18 So we were doing a lot of CCAR and capital
19 stress-testing work.

20 Q. And how long did you hold the
21 position of head of financial analysis at
22 JPMorgan Chase?

23 A. Five-plus years.

24 Q. Is that the last job you had
25 before you joined Celsius?

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2 A. No. I was at Cerberus Advisory
3 and -- Advisory Company, yeah.

4 Q. How long were you at Cerberus?

5 A. Under a year. Just a little bit
6 over six months.

7 Q. And what was your position there?

8 A. Senior managing director.

9 Q. And so you left Cerberus then for
10 Celsius. Is that right?

11 A. No, no. Then I -- I own a couple
12 farms in Ecuador. My wife is Ecuadorian. We
13 moved there with our children a couple years
14 back. So I took almost three years off
15 developing my farms in Ecuador.

16 Q. So you left the world of finance
17 to pursue the life of a farmer. Is that safe
18 to say?

19 A. Exactly correct. Yes, sir.

20 Q. Okay. So after that time off, did
21 you then go to Celsius?

22 A. Yes, I did.

23 Q. Okay. And when did you join
24 Celsius?

25 A. March 21, 2022.

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2 Q. And what role did you have when
3 you joined Celsius?

4 A. Head of financial planning and
5 analysis and head of investor relations.

6 Q. And please take me through your
7 career development during your time at
8 Celsius.

9 Are you still in that role or has
10 your role changed?

11 MR. McCARRICK: Object to
12 form.

13 A. My role --

14 MR. McCARRICK: You can
15 answer.

16 A. Yeah, my role has changed.
17 Shortly before petition, middle of July, I was
18 promoted to the CFO, chief financial officer
19 of Celsius. And then on, I believe,
20 September 27 of this year, I was appointed as
21 chief restructuring officer and interim chief
22 executive officer, still retaining the chief
23 financial officer title.

24 Q. What motivated you to join
25 Celsius?

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2 A. Well, for one, I wanted the
3 flexibility of having different locations --
4 right? -- my family is in Ecuador. Celsius
5 provided me with that benefit of being able to
6 work part of the time in Seattle, part of the
7 time in Ecuador.

8 I also found crypto to be quite
9 fascinating. At that point in time, you know,
10 my farms are in very rural areas of Ecuador
11 where there is zero opp- -- very little
12 opportunity and extreme poverty.

13 And I, you know, drove by many
14 times the banks on Fridays with the lines
15 going all the way down the street. And
16 something about crypto, I believe, is a great
17 use case for, kind of, banking the unbanked in
18 the long term.

19 Q. Did you have experience with
20 cryptocurrency before joining Celsius?

21 A. No, sir.

22 Q. Now, at the time you joined
23 Celsius in March of 2022, the crypto winter
24 had already started. Is that safe to say?

25 MR. McCARRICK: Object to

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2 form.

3 You can answer.

4 A. Yeah, there was a downturn at that
5 point in time. I'm not sure if it was winter
6 or not, but there was definitely a severe
7 downturn in crypto.

8 Q. Did -- did that fact at all
9 influence your decision to join Celsius?

10 A. No. I'm not -- I'm not -- being
11 at JPMorgan Chase for almost two decades
12 taught me about risk and how to manage risk,
13 and I'm not af- -- you know, I don't avoid
14 risk; I try to manage risk. So, no, it didn't
15 scare me.

16 Q. Well, did it incentivize you?
17 Were you attracted to working for a company at
18 a time when it was going through financial
19 difficulties?

20 MR. McCARRICK: Object to
21 form.

22 You can answer.

23 A. I -- the position of the industry
24 and where crypto prices were at that point in
25 time, to me, was not part of my decision. I

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2 believed in and I still do believe in the
3 long-term potential of crypto.

4 Q. Okay. So my colleague Kathryn
5 Sutherland-Smith is in the room with you. And
6 I'm going to ask her to pass a copy of your
7 declaration to the court reporter. I know you
8 already have one.

9 MR. HERSHEY: But I'd like the
10 court reporter to mark it as Ferraro
11 Exhibit Number 1. And then
12 Ms. Sutherland-Smith can also give
13 copies to anyone else who is there
14 in person.

15 I'll note that, for those
16 joining by Zoom, we are not going to
17 bring this document up on the
18 screen. The reason for that is it's
19 publicly available on the docket in
20 this case, Docket Number 1326.

21 And so I'd rather not have to
22 deal with the logistical issue of
23 going back and forth to a document
24 on Zoom when everyone who wants to
25 see the document can find it and

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2 follow along.

3 CERTIFIED STENOGRAPHER: You
4 have to give me a moment to mark the
5 exhibit, please.

6 MR. HERSHEY: Oh, sure, take
7 your time.

8 (Ferraro Exhibit 1,
9 Declaration of Christopher Ferraro,
10 marked for identification, as of
11 this date.)

12 BY MR. HERSHEY:

13 Q. Mr. Ferraro, to ask a silly
14 question, you recognize this document, don't
15 you?

16 A. Yes, sir.

17 Q. Okay. Who drafted this document?

18 A. It was Kirkland & Ellis, my legal
19 advisors.

20 Q. It was Kirkland & Ellis who
21 drafted your declaration?

22 A. Yes.

23 Q. What role did you play in drafting
24 the declaration, if any?

25 A. I'm the declarant. So, you know,

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2 I was -- I was there, kind of, hand in glove
3 in drafting the declaration.

4 Q. What do you mean by that when you
5 say you were there "hand in glove"?

6 A. Well, there are certain aspects in
7 here that cross over into the business side.
8 You know, I was able to review and help
9 narrate some of that, give feedback,
10 et cetera.

11 Q. But the primary role for drafting
12 the declaration was with Kirkland & Ellis?

13 MR. McCARRICK: Object to
14 form.

15 You can answer.

16 A. Yes.

17 Q. Are there paragraphs that you can
18 identify that you did not review in the
19 declaration?

20 A. No.

21 Q. So you reviewed the entire
22 declaration?

23 A. Yes, sir.

24 Q. Okay. Are there paragraphs that
25 you can identify as being written entirely by

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2 Kirkland & Ellis?

3 A. I don't -- I don't recall.

4 Q. Okay. There may be paragraphs
5 drafted entirely by Kirkland & Ellis, you just
6 don't recall?

7 MR. McCARRICK: Object to
8 form.

9 You can answer.

10 A. Yes. There may be.

11 Q. Okay. Are there any subject
12 matters covered in the declaration that you
13 recall Kirkland & Ellis doing the drafting
14 for?

15 A. Not specifically. They were the
16 main -- the key people drafting it.

17 Q. And was a completed draft
18 presented to you for review before you
19 provided input?

20 A. A working draft was provided to me
21 when I provided input, yeah.

22 Q. So in other words, just to be
23 clear, Kirkland & Ellis made a draft of the
24 declaration and then presented it to you for
25 your input?

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2 A. And then I would comment -- yes.

3 Q. Let's turn -- actually, I'm going
4 to ask -- just to get the exhibits out of the
5 way, I'm going to ask Ms. Sutherland-Smith to
6 pass the court reporter and to you a copy of
7 the debtors' responses and objections to the
8 written deposition questions posed by the
9 committee, which we marked as Ferraro Exhibit
10 Number 2.

11 MR. HERSHEY: And I'll take a
12 pause to let the court reporter do
13 that.

14 (Ferraro Exhibit 2, Debtors'
15 responses and objections to the
16 written deposition questions posed
17 by the committee, marked for
18 identification, as of this date.)

19 CERTIFIED STENOGRAPHER: You
20 can continue, thank you.

21 MR. HERSHEY: Thank you.

22 Okay. Just for reference for
23 everyone on Zoom, again, we're not
24 going to pull this up on the screen.
25 But this document is available on

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2 the public docket as Docket Number
3 1406.

4 And I'll also note that,
5 unless something unexpected happens,
6 this is the only -- these two are
7 the only documents that I intend to
8 introduce as exhibits during this
9 deposition today.

10 BY MR. HERSHEY:

11 Q. Mr. Ferraro, do you recognize this
12 document?

13 A. Yes, I do.

14 Q. And what is it?

15 A. (Reading):

16 "Debtors' responses and
17 objections to the official committee
18 of unsecured creditors' written
19 deposition questions for the debtors
20 in connection with the debtors'
21 amended motion for entry of an order
22 establishing ownership of assets in
23 the debtors' earn program,
24 permitting the sale of stablecoins
25 in the ordinary course, and granting

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2 related relief."

3 Q. Thank you. When did you first see
4 this document?

5 A. I cannot remember whether it was
6 Friday or Saturday, to tell you the truth.
7 The days are blurry.

8 Q. But it was in the course of your
9 preparation for this deposition?

10 A. It was in connection with this
11 topic, this legal topic, and, yes, I was --
12 during of which I was prepping for my
13 deposition. But I wouldn't say I saw this in
14 preparation of my deposition.

15 Q. Can you explain a little more what
16 you mean. I found that answer a bit
17 confusing.

18 So it was in connection with this
19 topic but not preparation for your deposition?

20 A. It was done in the same time.
21 This document was not for my preparation of my
22 deposition. This document was done
23 separately. And I was brought into the
24 discussion Friday or Saturday around this
25 document. It was not part of my deposition

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2 prep, this document.

3 Q. Okay. Understood.

4 A. Yeah.

5 Q. So when you say you were "brought
6 into the discussion" regarding this document,
7 what discussion are you referring to?

8 A. There was a --

9 MR. McCARRICK: Let me just
10 caution you to exclude any
11 communications -- Sam, I'm not quite
12 sure what discussions -- I mean, are
13 you asking for his discussions with
14 counsel about the document?

15 MR. HERSHEY: I'm not sure,
16 T.J. He referenced a discussion.
17 I'm wondering what he's referring
18 to.

19 MR. McCARRICK: Okay. So --

20 THE WITNESS: Yeah, my counsel
21 from Kirkland & Ellis was there.

22 MR. McCARRICK: Okay. So to
23 the extent that you had any
24 discussions with people other than
25 counsel, you should feel free to

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2 disclose those. But don't disclose
3 any discussions with counsel.

4 A. Yeah, the only --

5 BY MR. HERSHEY:

6 Q. Yeah, so I think -- go ahead.
7 Sorry.

8 A. The only discussions that I had on
9 this document was with counsel.

10 Q. Understood. Okay. Well, I
11 certainly won't ask you to describe the
12 content of those discussions. But let me ask
13 you: Was that discussion in the context of
14 answering the questions in the document?

15 A. Yes.

16 Q. Okay. Do you recall which
17 questions specifically you discussed answers
18 to?

19 A. I don't remember myself
20 specifically discussing answers to any of the
21 questions. I was actively working on my prep
22 while the meeting was happening.

23 Q. So I just want to hone in on that.
24 So in other words, let me -- let me take a
25 step back and ask a broader question.

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2 Did you contribute to the answers
3 in this document?

4 A. Not in any meaningful way, no,
5 sir.

6 Q. Okay. And so to be clear, is it
7 your testimony that, while you were preparing
8 for your deposition, there happened to be a
9 conversation about this document taking place
10 in your vicinity?

11 A. There was a separate meeting. I
12 was part of that meeting but I was
13 multitasking. These -- the questions in this
14 document weren't rel- -- in my opinion, at
15 least in my practice or prep sessions, was not
16 relevant to my testimony or my deposition.

17 So I was, sort of, paying
18 attention to the discussion, but I was not the
19 key player in these -- answering these
20 questions. Like I said, I did not provide any
21 significant input into these answers.

22 Q. Nor were you asked to provide
23 input into the answers?

24 MR. McCARRICK: Object to
25 form.

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2 You -- calls for privileged
3 information. Instruct you not to
4 answer.

5 Q. Your statement that you didn't
6 view these questions as relevant to your
7 testimony today, why do you say that?

8 A. Well, my testimony is more related
9 to, at least the way that I was preparing for
10 it and was thinking about it, was more related
11 to, number one, kind of, how we manage the
12 business and how we would deploy coins within
13 the terms of use, as well as, kind of, the
14 cash flow budget and the liquidity needs
15 that's facing the debtors.

16 Q. Have you reviewed all of the
17 questions in this document?

18 A. I reviewed -- I reviewed -- I
19 cursory reviewed the document. And I was part
20 of the discussion of listening, not actively,
21 but as part of the discussion for probably the
22 first ten to 15.

23 Q. So is the answer then that you
24 have not reviewed all of the questions in this
25 document?

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2 A. I've read it. I haven't studied
3 it.

4 Q. Okay. But it's your opinion that
5 these questions -- none of these questions is
6 relevant -- let me start over with a clean
7 question.

8 It's your view that none of these
9 questions is relevant to your testimony today?

10 MR. McCARRICK: Object to
11 form.

12 You can answer.

13 A. I need to -- let me review the
14 questions real quick, if you could give me a
15 moment.

16 Q. Well, before you do that, I just
17 want to understand your views coming into the
18 deposition --

19 A. I do not --

20 Q. -- yeah, go ahead.

21 A. I do not -- yeah, I do not
22 remember a -- multiple questions being
23 directly the point of my deposition today. I
24 think the questions were more around specific
25 terms of use, how people accepted, you know,

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2 the double-click of the terms in use and some
3 of those related things.

4 I do not -- off of memory, I do
5 not remember anything in here about the cash
6 flow budget -- right? -- the 13-week or the
7 professional-eyes-only cash flow budget that
8 goes through March. And I also don't remember
9 anything about, kind of, how we deployed
10 assets in the past.

11 Q. Okay. That's helpful. Thank you.

12 And so just to be clear, what in
13 your opinion, are the topics for which you are
14 being offered today to testify?

15 MR. McCARRICK: Object to
16 form.

17 You can answer.

18 A. Yeah, largely around the need for
19 liquidity and, second, any related, kind of,
20 ordinary, prepause ordinary course of how we
21 used Celsius coins to deploy assets.

22 Q. Anything else?

23 A. Not off of memory -- not off of
24 the top of my mind, but I'm here to support
25 the process, so ...

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2 Q. Okay. Now, to be clear, though,
3 your declaration does cover more than just
4 those two topics. Right?

5 A. Yeah, it probably does. Again, I
6 mean, I prepped for this for two days, so I
7 focused on my areas, and those are the ones
8 that are most top of mind. There could be
9 more stuff that's related to the depositions,
10 of course, yes, in this declaration.

11 Q. Okay. Do you know who contributed
12 to answering the questions in this document?

13 A. There was business folks that were
14 on the discussion as well as legal advisors
15 from Kirkland & Ellis.

16 Q. Who were the business folks?

17 A. There was the general counsel, Ron
18 Deutsch. There was another lawyer, internal
19 lawyer, Joseph Golding. I'm losing his last
20 name, I apologize.

21 Q. Okay. Well, what do you
22 understand his last name to be, sitting here
23 today?

24 A. I can't remember. It's Golding,
25 Golding. Joseph Golding.

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2 Q. Okay. Anyone else?

3 A. I think Oren Blonstein might be on
4 the -- might have been on there, but I'm
5 honestly having trouble remembering everybody
6 who was on the call.

7 Q. Okay.

8 A. I think Oren was on the call.
9 Yeah.

10 Q. Is that all you can recall?

11 A. That's all I can recall.

12 Q. Okay. Let's turn back to
13 Exhibit 1, which is your declaration.

14 A. Yes.

15 Q. And let me know. Then turn to
16 page 11, please.

17 All right. Do you see --

18 MR. McCARRICK: Page or --

19 page or paragraph 11, Mr. Hershey?

20 MR. HERSHEY: Oh, I'm sorry.

21 I'm sorry, paragraph 11. Thank you.

22 A. Okay. Good. Okay. Perfect.

23 Q. Yeah.

24 A. If you get -- yeah.

25 Q. All right. And do you see just

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2 above paragraph 11 the header that says "The
3 earn program"?

4 A. Yes, sir.

5 Q. Okay. What was the earn program?

6 A. The earn program was a program in
7 which users could put cryptocurrency on the
8 platform. And in consideration for putting
9 the cryptocurrency on the platform, users
10 would earn rewards. And the rewards were set,
11 kind of, weekly and were different based upon
12 the different types of cryptocurrency.

13 Q. Before April 15, 2022, did Celsius
14 offer any other program to its customers
15 besides the earn program?

16 A. We have lending programs.

17 Q. Okay.

18 A. I think they referred to it as the
19 borrow program. That was for retail and
20 institutional. Before April, I cannot -- I
21 don't remember exactly when we started rolling
22 out the swap program. It was, sort of,
23 beta-tested early on. I'm not sure if it was
24 out in April. It might have been, if not
25 shortly after that. That's --

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2 Q. What is the swap program?

3 A. That's the ability to effectively
4 swap. Let's say you own Bitcoin and you want
5 ETH, you can swap Bitcoin for ETH. It's
6 effectively like a trade.

7 Q. Got it. But you're not sure when
8 that program was rolled out?

9 A. It was sometime around April, May.

10 Q. Was the prime rate program offered
11 by Celsius before April 13, 2022, the earn
12 program?

13 MR. McCARRICK: Objection
14 to -- object to form.

15 You can answer.

16 A. The earn program was the biggest
17 product offering with the biggest uptake, for
18 sure.

19 Q. And as of -- if you know, as of
20 April 15, 2022, approximately how many users
21 participated in the earn program?

22 A. I was prep- -- creating a budget
23 for the company, so I'm going off of numbers
24 that are, kind of -- they should be
25 directionally accurate and in magnitude, but

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2 around, I believe, 600,000 customers-ish were
3 in the earn program. Some of those --

4 Q. And do you know -- oh, sorry. Go
5 ahead.

6 A. Some of those could have small
7 balances; some of them could have large
8 balances, yeah.

9 Q. Right. And do you know how
10 they -- let me start that over.

11 Do you know, as of April 15, 2022,
12 what percentage of the users participating in
13 the earn program were unaccredited investors?

14 MR. McCARRICK: Object to
15 form.

16 You can answer.

17 A. I do not know. Off the top of my
18 head, I do not know.

19 Q. Okay. Did Celsius conduct any
20 marketing in connection with the earn program?

21 A. Any what? I'm sorry.

22 Q. Marketing.

23 A. Marketing. As I stated earlier, I
24 started March 21. So my, kind of, knowledge
25 of events that occurred before then are

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2 limited. But from -- we had different
3 versions of marketing that I remember,
4 referral bonuses, if you brought additional
5 funds on the platform, you might get a coupon
6 for, you know, \$50 or \$100 of some
7 cryptocurrency.

8 There was also blog posts and
9 Twitter channels and YouTube channels and
10 ask-me-anything that occurred weekly, I
11 believe, yeah. I believe those are
12 predominantly the channels in which they would
13 market.

14 Q. So it sounds like there was
15 significant marketing conducted by Celsius in
16 connection with the earn program?

17 MR. McCARRICK: Objection to
18 form. Mischaracterizes.

19 You can answer.

20 A. I mean, there was marketing
21 activities. Right? Like, whether -- I'm used
22 to a world in which you, kind of, measure
23 those, the significance in dollars. So I
24 don't know how much of the total -- what the
25 total budget was for marketing historically,

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2 but I think there -- I think it's safe to say
3 there was a considerable amount -- amount of
4 attention paid to marketing, yeah.

5 Q. And did Celsius have a target
6 demographic for the earn program marketing?

7 A. Not that I'm aware of.

8 Q. Would you expect the marketing
9 that you just described generally to reach
10 accredited investors or not accredited
11 investors?

12 MR. McCARRICK: Objection.

13 Calls for speculation.

14 You can answer to the extent
15 you know.

16 A. I -- honestly, I don't know. I
17 wasn't very close to the marketing program.
18 We had shut it down by the time I became CFO
19 and acting CEO. So -- yeah.

20 Q. Well, let me ask it a different
21 way. You mentioned blog posts as one form of
22 marketing. Right?

23 A. From my understanding, though I
24 have -- I've read two blog posts from Celsius,
25 so my amount of time that I've spent on any of

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2 these channels is limited. But, yes, my
3 understanding is there was blog posts.

4 Q. So just to be clear, your
5 understanding is there were blog posts in
6 connection with marketing the earn program?

7 MR. McCARRICK: Object to
8 form.

9 You can answer.

10 A. I don't know if it was direct to
11 the earn program, but I know that Celsius was
12 writing on the -- posting blogs. That's what
13 I know.

14 Q. Okay. And would you expect blog
15 posts to predominantly reach accredited
16 investors or nonaccredited investors?

17 MR. McCARRICK: Objection.
18 Calls for speculation.

19 You can answer.

20 A. I -- honestly, I don't know
21 because I'm not involved in looking at the web
22 traffic and where it was coming from. I would
23 assume it was probably a pretty consistent,
24 kind of, slice of the customer base.

25 Q. Okay. What about ask-me-anything

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2 videos? Would you expect those predominantly
3 to be viewed by accredited investors or
4 nonaccredited investors?

5 A. I --

6 MR. McCARRICK: Object to --
7 object to form.

8 You can answer.

9 THE WITNESS: Okay.

10 A. I wouldn't know -- right? -- I
11 think it would be consistent with, kind of,
12 the customer makeup. So there would be some
13 accredited, some nonaccredited.

14 Q. And you have no opinion regarding
15 the proportion of accredited versus
16 nonaccredited that's likely to view an
17 ask-me-anything video on YouTube?

18 MR. McCARRICK: Object to
19 form.

20 You can answer.

21 A. Other than when I was interviewing
22 with Celsius, I've probably spent total time
23 of one or two hours watching AMAs.

24 So I have a job to do. Watching
25 AMAs was not one of them. So I have very

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2 limited knowledge on this topic.

3 Q. And just to be clear, I'm asking
4 more for your opinion on this than your
5 personal experience watching AMA videos. So
6 I'll give one more example based on your
7 testimony.

8 Referral bonuses. Do you think
9 that referral bonuses would more attract
10 accredited investors or nonaccredited
11 investors to Celsius' products?

12 MR. McCARRICK: Objection to
13 form.

14 You can answer.

15 A. I would think that both
16 nonaccredited and accredited investors would
17 be interested in the referral bonuses.

18 Q. Okay.

19 A. So ...

20 Q. Now, at some point, Celsius
21 started offering other products in addition to
22 the earn program. Right?

23 A. Yes.

24 Q. And, in particular, Celsius
25 started offering a custody program. Right?

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2 A. Yes.

3 Q. And that product was first offered
4 April 15, 2022. Right?

5 A. That's my understanding, yes.

6 Q. Okay. What is your understanding
7 as to why Celsius created the custody product?

8 MR. McCARRICK: Object to
9 form.

10 Sam, could you explain how
11 this is relevant to this motion?

12 MR. HERSHEY: T.J., I'm not
13 here to answer questions. You can
14 preserve your objection if you want
15 to.

16 MR. McCARRICK: Okay. I mean,
17 I'm just trying to understand how
18 questions about custody, which we
19 all carved out, you know, of the
20 requested findings in this case are
21 relevant.

22 But I'll object to form. It's
23 outside of the scope.

24 You can answer.

25 A. Mr. Hershey, can you give me the

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2 question again. I want to make sure I heard
3 it right.

4 BY MR. HERSHEY:

5 Q. Sure. Why did Celsius create the
6 custody program?

7 A. It is my understanding, again, I
8 was -- maybe two weeks when it got launched, I
9 was with Celsius. That's the total amount of
10 my tenure at that point in time.

11 But from my understanding, there
12 was a project that had been going on for some
13 time related to looking into launching a
14 custody product. Some of this was due to --
15 my understanding, some of this was due to,
16 kind of, our understanding of what the
17 regulatory backdrop was and changes in that,
18 as well as customer preference -- right? --
19 some might want custody over earn and hold
20 title to their assets under the custody -- and
21 retain title of their assets under the custody
22 program.

23 Q. You made a reference just now to
24 the regulatory backdrop. What do you mean by
25 that?

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2 MR. McCARRICK: Object to
3 form.

4 Sam, this is so far outside
5 the scope. I mean ...

6 MR. HERSHEY: T.J., I --
7 you've preserved your objection. He
8 said "regulatory backdrop." I'm
9 asking him to clarify his testimony.

10 MR. McCARRICK: Yeah. And a
11 question that was also outside the
12 scope.

13 I mean, you can answer to
14 the -- you know, to the extent you
15 know. But, I mean, if we -- if, you
16 know -- I'll give you a little leash
17 here, Sam, but I'd rather focus on
18 the, you know, ownership under the
19 earn program, not custody.

20 MR. HERSHEY: Yeah, I think
21 there is a connection between earn
22 and custody here, and I promise,
23 T.J., we're going to get there. But
24 I want to understand his
25 understanding and his testimony.

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2 BY MR. HERSHEY:

3 Q. So I'd like to ask again: You
4 referred to a regulatory backdrop. What did
5 you mean by that?

6 A. Yeah, so it's important to know,
7 when I was at JPMorgan, I was not a -- I was
8 not on the institutional or the custody side,
9 I was a retail person and then I was in
10 corporate. So my understanding of the custody
11 offering is largely what I've learned really
12 since I've joined Celsius, just as a backdrop
13 to that.

14 You know, the earn program carries
15 with it certain risks -- right? -- the
16 customer is transferring title to Celsius.
17 Celsius can lend, rehypothecate, et cetera.
18 So making sure that that product was -- my
19 understanding is making sure that that product
20 was, kind of, aligned with regulatory
21 securities laws, et cetera.

22 And I think given that it was a
23 marquee product, we needed to have a backup
24 plan or a secondary product in case there
25 was -- you know, we wanted to, kind of,

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2 de-risk. Right? We're in the business --
3 when you have one product that's your primary
4 product, you have a lot of eggs in one basket.

5 So my understanding was the
6 custody solution was to diversify against any
7 sort of, you know, changes, either in the
8 regulatory landscape, customer preference,
9 risk in the marketplace, et cetera.

10 Q. Was there a change in the
11 regulatory landscape that contributed to the
12 creation of custody?

13 MR. McCARRICK: Object to
14 form.

15 Exclude from your answer any
16 information that you solely know
17 from counsel. To the extent you
18 have any other knowledge or
19 information, you can answer.

20 A. Sam, could you repeat the question
21 one more time. I'm sorry.

22 Q. Yeah. You mentioned in your
23 testimony a change in the regulatory
24 landscape. Was there a change in the
25 regulatory landscape that contributed to

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2 Celsius' creation of the custody program?

3 A. I wasn't with the company at that
4 point in time. So I do not know. I'm only --

5 Q. You don't know whether there was a
6 change in the regulatory landscape that
7 contributed to the custody --

8 A. I was working on my farm in
9 Ecuador at this time, Mr. Hershey.

10 Q. Okay.

11 A. Yeah.

12 Q. So you're not aware whether
13 regulatory issues regarding nonaccredited
14 investors keeping funds in the earn program
15 contributed to the creation of the custody
16 program?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. I've heard those concerns. I was
21 not aware at the time of the launch or any of
22 those. My understanding of this is largely in
23 my capacity as CFO, some of it -- some of it
24 on the product launch -- right? -- the back
25 end, planning, analysis, we had to deal with

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2 some reporting and things like that.

3 But, in general, I was not
4 involved with this, not close to it. I didn't
5 have an understanding. I wasn't privy to
6 those conversations.

7 Q. So I just want to be crystal
8 clear, Mr. Ferraro, that every question I'm
9 asking you today I'm asking for your
10 understanding sitting here today. I'm not
11 asking for your understanding when you joined
12 the company. I'm not asking you the basis for
13 that understanding, though you're free to
14 clarify that.

15 I'm just asking you: Sitting here
16 today, you have an awareness that there was a
17 change in the regulatory landscape that led to
18 the creation of the custody program?

19 A. I --

20 MR. McCARRICK: Object --

21 Q. It sounds like sitting here
22 today -- let me just finish. It sounds like
23 sitting here today, you do have that
24 understanding. So if that is the case, I'd
25 like you to expand on that.

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2 MR. McCARRICK: So objection
3 to form.

4 And exclude from your answer
5 anything that you learned solely
6 through counsel. Otherwise, feel
7 free to answer.

8 A. Most of my understanding,
9 Mr. Hershey, related to this is privileged,
10 has to do with communication that I've had
11 with legal advisors, internal and external.

12 And my knowledge of this is also
13 not that fulsome. Right? I'm dealing with
14 what's facing this company today, not what
15 happened in April or before. So I have very
16 little to provide here.

17 I know there was -- I'll say, kind
18 of, at a high level, I know there was
19 discussion about, kind of, concerns about the
20 earn product. There was regulators that were
21 asking -- my understanding is that there was
22 some pressure -- right? -- around it. And
23 that's about all I can say on this topic.

24 Q. What do you mean "there was some
25 pressure around it"?

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2 A. Well, this goes back to privileged
3 communication that I've had.

4 Q. Okay. You can't say more because
5 that would require you to divulge privileged
6 communications?

7 A. Yes.

8 Q. Okay. After Celsius created the
9 custody program, it allowed nonaccredited
10 investors to continue to keep assets that were
11 already in the earn program in that program.
12 Is that right?

13 A. Yeah. Grandfathered, yes.

14 Q. Why did Celsius choose to do that?

15 MR. McCARRICK: Objection to
16 form. Outside the scope.

17 You can answer.

18 A. I do not know.

19 Q. How was that decision made?

20 MR. McCARRICK: Object to
21 form. Outside the scope.

22 You can answer.

23 A. I was -- I was two weeks into the
24 company at that point in time and in a very
25 different facility. I do not know,

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2 Mr. Hershey.

3 Q. Okay. After April 15, 2022, if a
4 nonaccredited investor had assets in the earn
5 program, would those assets remain -- sorry --
6 would those assets remaining in the earn
7 program by fault -- excuse me. Let me start
8 that question over. It's a bit of a long
9 question.

10 After April 15, 2022, if a
11 nonaccredited investor had assets in the earn
12 program, would those assets remain in the earn
13 program by default unless that customer chose
14 to remove them?

15 MR. McCARRICK: Objection to
16 form. Outside the scope.
17 You can answer.

18 A. My understanding is they would
19 remain in the earn program.

20 Q. And the customer would continue to
21 earn rewards on those assets until the
22 petition date. Is that right?

23 MR. McCARRICK: Objection to
24 form. Outside the scope.
25 Foundation.

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2 You can answer.

3 A. That's my understanding, yes.

4 Q. Okay. Do you think that allowing
5 nonaccredited investors to continue to accrue
6 awards may have incentivized them to keep
7 their assets in the earn program?

8 MR. McCARRICK: Objection to
9 form. Calls for speculation.

10 You can answer.

11 A. I do not know.

12 Q. You have -- you have no view on
13 whether allowing a customer to accrue awards
14 would incentivize them to keep their assets in
15 that award-accruing program?

16 A. Well --

17 MR. McCARRICK: Object to
18 form.

19 You can answer to the extent
20 you know.

21 A. I mean, as a us- -- let me think
22 about it from a user standpoint -- right? --
23 I'm giving my cryptocurrency, basically
24 changing title, to Celsius, putting it on
25 their platform. What I get in return is

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2 rewards. So I think there is a linkage
3 between, kind of, what each individual gets.
4 I think that's a reasonable assumption.

5 Q. So I take it the answer to that
6 is, yes, you do think that allowing
7 individuals to accrue awards would incentivize
8 them to keep the assets on the earn program?

9 MR. McCARRICK: Object to
10 form. Mischaracterizes.

11 You can answer.

12 A. What I'm saying is people put --
13 people opted in -- people chose to go into the
14 earn program, I would think, predominantly to
15 earn rewards.

16 Q. And so the awards incentivized
17 them to join the earn program?

18 MR. McCARRICK: Objection to
19 form. Same objection.

20 You can answer.

21 A. I mean, it's a consideration they
22 got for being part of the earn program. That
23 was the value proposition to the customer, was
24 to earn, yeah, rewards.

25 Q. So the answer to my question is

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2 yes?

3 MR. McCARRICK: Object to
4 form. Asked and answered four times
5 now.

6 You can answer again.

7 A. I mean, yes, people put assets
8 onto the Celsius platform so Celsius could pay
9 them rewards. Whether that incented them to
10 stay or there was other things going on, I
11 don't know. It's a case-by-case basis. But
12 they were there to earn rewards.

13 Q. When the custody program was
14 created, did Celsius consider moving all
15 assets belonging to nonaccredited investors
16 from earn to custody?

17 MR. McCARRICK: Objection.
18 Outside the scope.

19 You can answer.

20 A. I have -- I was not part of those
21 discussions. I was not with the company
22 probably when the majority of those
23 discussions occurred. I do not know the
24 answer to that.

25 Q. Okay. Did Celsius take any steps

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2 to determine whether there were potential
3 legal issues with allowing nonaccredited
4 investors to continue to keep assets in the
5 earn program?

6 MR. McCARRICK: Objection.

7 Calls for privileged information.

8 Instruct you not to answer.

9 Q. Okay. Was Celsius in discussion
10 with regulatory authorities around the time
11 that it created the custody program?

12 MR. McCARRICK: Object to
13 form. Well outside the scope.

14 You can answer.

15 A. I wouldn't know. I wasn't part of
16 the company at that point in time.

17 Q. Okay. I'm going to change gears,
18 and I want to talk about the formative assets,
19 which I think is one of the subjects that you
20 said you view it as your role here today to
21 testify about.

22 What was the debtors' process for
23 determining how to deploy assets transferred
24 by account holders into the earn program?

25 MR. McCARRICK: Object to

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2 form.

3 You can answer.

4 A. What was the method of deploying
5 assets?

6 Q. Yeah, I'll ask it again.

7 What was the debtors' process for
8 determining how to deploy assets transferred
9 by account holders into the earn program?

10 A. Okay. I'll speak to it from my
11 understanding where I sit today, joining the
12 company in March 21st.

13 You know, we pay rewards to
14 customers to transfer title, become part of
15 the earn program. And with those
16 cryptocurrencies, Celsius would then deploy
17 into different type of deployment activities.

18 Could be your regular lending, so
19 retail lending. You know, usually those were
20 loans that were collateralized by
21 cryptocurrencies up to 50 percent. It was
22 lower for certain cryptocurrencies, and the
23 higher the LTV, up to 50 -- I think there was
24 three price points, 25, 33, and 50 percent
25 LTV -- the rate would change.

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2 And those would usually be either
3 dollars or stablecoins that we would lend to
4 the customer; so backed by other
5 cryptocurrencies, and we would give them
6 dollars or stablecoins. Those two -- those
7 two are really fungible and interchangeable in
8 the space that we operate in.

9 The other program was the
10 Institutional Lending Program. Obviously, it
11 was for institutions. These would be a little
12 bit higher. These could be unsecured. They
13 could be higher, above 100 percent LTV. Some
14 of them were below 100 percent LTV. And
15 typically, like a bank rate, any lending type
16 of protocol, the higher the risk, the higher
17 the rate. Right? So those were the two, kind
18 of, key lending programs.

19 We also staked assets. So we
20 would stake -- predominantly it was ETH. We
21 would deploy into DeFi protocols. And we
22 would also use the cryptocurrencies to
23 borrow -- to pledge and borrow against for
24 operational purposes.

25 Q. So I appreciate the answer, but I

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2 actually don't think it's responsive to the
3 question that I asked. So I'm going to ask my
4 question again. I'd like you to try to answer
5 my question.

6 What was the debtors' process for
7 determining how to deploy assets transferred
8 by account holders into the earn program?

9 MR. McCARRICK: Objection to
10 form.

11 You can answer to the extent
12 you know.

13 A. Are you talking about internal
14 deployment, risk management, liquidity, that
15 type of stuff?

16 Q. Yes.

17 A. Okay. I'm sorry. I thought you
18 were asking for a description of the programs.

19 Q. Okay.

20 A. Okay. None of these were in my --
21 I didn't -- I wasn't owner of these policies.
22 So I'm, kind of, speaking to my understanding,
23 just to give that as a backdrop.

24 There was a liquidity framework,
25 so if we -- and it would go coin by coin. So

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2 if we had excess liquidity, there would be a
3 signal to the deployment team that you could
4 deploy XYZ coin.

5 So maybe if we had excess Bitcoin,
6 Bitcoin would be sitting there as a deployable
7 coin, and that would be on a
8 cryptocurrency-by-cryptocurrency basis. And
9 then there was also --

10 Q. Okay. Any other -- sorry. Go
11 ahead.

12 A. Yeah.

13 Q. Please go ahead.

14 A. Yeah. To my understanding -- and
15 I do not know all the specifics to it -- but
16 then there was also, kind of -- kind of, hard
17 limits that risk management would put in
18 place. So you can't stake above X percent of
19 the total coins. You know, maybe deploying
20 into liquidity pools, you can't be above X
21 percent of the pool, things like that. So we
22 didn't get too -- you know, own too much of
23 the trade, and it would be very hard to get
24 out of.

25 Q. Okay. And who is involved in

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2 making those sorts of risk assessment
3 decisions?

4 MR. McCARRICK: Objection to
5 form. Outside the scope.

6 You can answer.

7 A. Risk management. And there was a
8 risk committee. I didn't join the risk
9 committee until I took the CFO title, so it's
10 hard for me to speak about before. But these
11 things would be discussed at the risk
12 committee.

13 There was also daily, kind of,
14 deployment meetings where the deployment team,
15 risk, and the executives would meet. And
16 there was also a weekly, kind of, investment
17 meeting. It wasn't a committee but it was --
18 it acted almost like a discussion of where we
19 should be investing and where we might want to
20 pull back on.

21 Q. And who, if anyone, was required
22 to sign off on those deployment decisions?

23 A. The limits or the deployment
24 decisions?

25 Q. Let's do both.

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2 A. Well, I'm only -- my understanding
3 would be risk would be responsible for the
4 limits and any of those policies and that the
5 deployment team's responsibility was to be
6 within those limits -- right? -- so that was,
7 kind of, the way that the -- that -- you know,
8 risk set the rules and the deployment team had
9 to follow those rules.

10 Q. So who was involved in setting the
11 rules?

12 MR. McCARRICK: Object to
13 form. Outside the scope.

14 You can answer.

15 A. Again, I think it was risk
16 management. I wasn't here for the vast
17 majority of the history of Celsius, but my
18 understanding would be risk would be setting
19 those limits and the policies and procedures
20 in place to make sure that folks stayed within
21 those limits. And then there was reporting
22 that was done.

23 Q. So -- okay. So you refer to risk
24 management. So who was on the risk management
25 team?

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2 MR. McCARRICK: Object to

3 form. Outside the scope.

4 You can answer.

5 A. It was ran -- it was led by an
6 individual named Rodney Wong. And then, you
7 know, there was probably five or six risk
8 professionals in addition to Rodney that made
9 up the team.

10 Q. Did the debtors take any steps to
11 make customers with assets in the earn program
12 aware of the risks from the debtors' asset
13 deployment strategies?

14 MR. McCARRICK: Object to
15 form. It escapes me what this has
16 to do with the terms of use and
17 their plain and unambiguous meaning.

18 But you can answer.

19 A. In just reviewing the terms of
20 use, I think there was a risk disclosure in
21 the terms of use, at least in the latter ones.

22 As I mentioned before, I didn't --
23 I didn't watch the AMAs. And I don't
24 typically read blog posts. You know, I -- so
25 limited, kind of -- I'm not the right -- the

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2 best person to answer that. But I know I did
3 come across it in the terms and uses in one of
4 the risk disclosures.

5 Q. Okay. So outside of the risk
6 disclosure and the terms of use, are you aware
7 of any other risk disclosures shared with
8 customers with assets in the earn program?

9 MR. McCARRICK: Object to
10 form. Outside the scope.

11 You can answer.

12 A. Off of memory, I believe there was
13 disclosures on the AMA. But I could be wrong.
14 I believe there was disclosures on the screen.

15 Q. So you recall viewing a risk
16 disclosure on the screen during --

17 A. No -- like, "this is not
18 investment advice," all that type of stuff. I
19 believe. You should verify. But I believe
20 there was.

21 Q. And do you view that as the same
22 thing as a risk disclosure regarding Celsius'
23 deployment of assets in the earn program?

24 MR. McCARRICK: Object to
25 form. Outside the scope.

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2 You can answer.

3 A. I don't know the details of what
4 the disclosure was. But I think it was a
5 disclosure that said, you know, "this is not
6 investment advice" and some other stuff on
7 there.

8 Q. Okay.

9 A. I don't know about the blog posts.
10 I can't remember anything specific on whether
11 or not there was disclosures there. So I'd go
12 back to the terms of use.

13 Q. Okay. Let's talk with the terms
14 of use. Let's actually turn to paragraph 23
15 of your declaration, which, again, is marked
16 as Exhibit 1. Let me know when you're there.

17 A. Yeah, I'm there. I'm just reading
18 it, if that's okay.

19 Q. Yeah. Take your time.

20 A. Okay. Thank you.

21 Q. In fact, yeah, read that
22 paragraph. When you're done, let me know.

23 A. (Document review.)

24 Yeah.

25 Q. You're done?

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2 A. Yeah, I'm done. Thank you.

3 Q. So in the first sentence, you
4 state:

5 "It is my understanding that
6 every version of the terms of use
7 includes one or more provisions
8 authorizing the debtors to make
9 unilateral updates to the terms of
10 use."

11 Do you see that?

12 A. Yes, sir.

13 Q. Okay. So you say "it is my
14 understanding."

15 What is that understanding based
16 on?

17 A. Reading the terms of use.

18 Q. Which terms of use?

19 A. Well, I -- in the Alex Mashinsky
20 declaration, I believe he included all terms
21 of use, 1 through 8, if I'm correct. They're
22 not in front of me, so -- but, yeah, in
23 reviewing them for my declaration and also for
24 preparation of this deposition, that's my
25 understanding --

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2 Q. You --

3 A. -- is --

4 Q. So just to be clear, you're
5 stating that you've read each version of the
6 terms of use, 1 through 8?

7 A. I've gone through the terms of
8 use. I've read them and I've seen some
9 reversions of them. I'm not an expert in the
10 terms of use or a lawyer, but yes.

11 Q. Okay. So your understanding is
12 based on your own review of the terms of use?

13 A. Yes, sir. And discussions I've
14 had about the terms of use, but predominantly
15 me reading them, yes.

16 Q. Okay. And so just to be clear,
17 each sentence in this paragraph -- I believe
18 there are three sentences total -- starts with
19 "It is my understanding," or "It is also my
20 understanding."

21 And so in each case, your
22 understanding that you're representing is
23 based on your review of the terms of use and
24 other discussions you've had regarding the
25 terms of use?

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2 MR. McCARRICK: Object to

3 form.

4 You can answer.

5 A. Yes, sir.

6 Q. Okay. Celsius has customers who
7 are located all around the world. Right?

8 A. Yes, sir.

9 Q. And some of those customers speak
10 languages other than English. Right?

11 MR. McCARRICK: Object to the
12 form.

13 You can answer.

14 A. I would think so, yes.

15 Q. Were there versions of Celsius'
16 website or app in languages other than
17 English?

18 MR. McCARRICK: Object to
19 form.

20 You can answer.

21 A. Honestly, I don't know the answer
22 to that. I've never seen any other version
23 other than English.

24 Q. Or terms of use provided to users
25 in any language other than English?

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2 MR. McCARRICK: Object to

3 form.

4 You can answer.

5 A. Not to my knowledge.

6 Q. And when you say not to your
7 knowledge, do you mean you don't believe
8 that --

9 A. I've only --

10 Q. -- terms of use were offered in a
11 language other than English, or you're just
12 not aware --

13 A. I've only seen --

14 Q. -- that the terms of use are
15 offered in a language other than English?

16 A. Sorry -- sorry for not letting you
17 finish.

18 Q. That's okay.

19 A. I've only seen the English --
20 English versions. My understanding -- I don't
21 know of any other terms of use that were in
22 other languages.

23 Q. Okay.

24 MR. HERSHEY: T.J., I'm about,
25 I'd say, halfway through my

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2 questions. We've been going for an
3 hour. I don't know if you want to
4 take a break now. I'm happy to keep
5 going.

6 Or I should really ask you,
7 Mr. Ferraro, if you want to take a
8 break or if you want to keep going.

9 THE WITNESS: Let's keep on
10 going. I don't need a break right
11 now. Thank you for asking.

12 MR. HERSHEY: Okay.

13 THE WITNESS: Yeah.

14 BY MR. HERSHEY:

15 Q. I want to turn to paragraph 26 of
16 your declaration now.

17 A. Yeah.

18 Q. Let me know when you're there.

19 MR. McCARRICK: I'm sorry,
20 Mr. Hershey, did you say paragraph
21 26?

22 MR. HERSHEY: Yeah, I did.

23 MR. McCARRICK: Okay.

24 MR. HERSHEY: Does that not
25 exist?

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2 MR. McCARRICK: No, I just
3 didn't hear you.

4
5 MR. HERSHEY: Okay. I was having
6 a --

7 MR. McCARRICK: Yeah, no,
8 unlike page 11, paragraph 26 is
9 there, yes.

10 MR. HERSHEY: Okay. Good.

11 BY MR. HERSHEY:

12 Q. Are you there, Mr. Ferraro?

13 A. Yes, Mr. Hershey, I am. Thank
14 you.

15 Q. Okay. Do you see the header "Sale
16 of the Earn Stablecoin" above paragraph 26?

17 A. Yes.

18 Q. Okay. What is stablecoin?

19 A. Stablecoin is a cryptocurrency
20 that is pegged to a specific fiat. So in the
21 case of stablecoins that are a USDC, USDT,
22 these are pegged to the US dollar nearly one
23 for one. They really don't trade above \$1,
24 but they could trade slightly below \$1.

25 Q. Got it. Okay. Let's turn

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2 actually now to Exhibit 2, which is your
3 responses and objections. And when you are
4 there, please turn to page 17, and
5 specifically on page 17, if you could look at
6 Question Number 23.

7 A. (Document review.)

8 Q. So whenever you're there, just let
9 me know.

10 A. I see Question Number 23, yes,
11 sir.

12 Q. Okay. So you see Question
13 Number 23, and I'll read it for the record:

14 "Provide the amount of
15 obligations related to each type of
16 proposed sale stablecoin associated
17 with earn accounts by amount and
18 number of account holders as of the
19 petition date."

20 Do you see that question?

21 A. Yes, sir.

22 Q. Okay. Now, you testified earlier
23 that you were not consulted regarding the
24 answers to any of the questions in this
25 document. Correct?

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2 A. Yeah, off of memory that's
3 correct.

4 Q. And so I take it, then, you were
5 not consulted specifically regarding this
6 question either?

7 A. That's correct.

8 Q. Okay. Let's look at where it says
9 "Response to Question Number 23."

10 And the second sentence reads:

11 "Subject to those general
12 objections, Celsius states that, as
13 of petition date, Celsius earn
14 obligations related to each type of
15 proposed sale stablecoin were as
16 follows."

17 Do you see that?

18 A. Yes.

19 Q. And there's a chart underneath.
20 Right?

21 A. Yes.

22 Q. Okay. And you see the column on
23 the left says "Coin Type"?

24 A. Yes.

25 Q. Just take a minute and look

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2 through the entries in that column. Are these
3 all types of stablecoins?

4 MR. McCARRICK: Object to
5 form.

6 You can answer.

7 A. Are these all -- I believe there's
8 more stablecoins than just this in
9 existence --

10 Q. Right. Let me -- let me -- yeah,
11 just to be clear, my question is: Are these
12 types of coin listed in this column all
13 stablecoin? In other words, is each of these
14 a type of stablecoin?

15 A. Yeah. Yes, it looks that way to
16 me.

17 Q. Okay. And you see the second
18 column says "Number of Coins"?

19 A. Yes.

20 Q. Okay. So looking at the first row
21 which says "USDC," you agree with me that, as
22 of the petition date, Celsius earn obligations
23 with respect to USDC was over 800 million
24 coins. Is that right?

25 A. Yes.

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2 Q. And going to the next row, USDT
3 ERC20, you agree with me that Celsius
4 obligations or earn obligations as of the
5 petition date was approximately, say, 100
6 million coins. Is that right?

7 MR. McCARRICK: Object to
8 form. Foundation.

9 You can answer.

10 A. Yes.

11 Q. Okay. And to be clear, do you
12 have -- did you know these numbers before
13 seeing them in this document?

14 A. These are numbers that my finance
15 team would have put together. I've seen
16 reports of existing, kind of, coins in the
17 freeze report that we run. But I don't know
18 them off of memory.

19 Q. Okay. And just to finish off with
20 this document, the GUSD, approximately 80
21 million coins as of the petition date. Right?

22 A. Yes, sir.

23 Q. And BUSD, approximately 30 million
24 coins as of the petition date. Right?

25 A. Yes.

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2 Q. And so if you can do some quick
3 math with me, we add up the number of coins in
4 those first four rows, that's over 1 billion
5 in stablecoins. Is that right?

6 A. About 1 -- 1. -- 1 billion and 50
7 million-ish, yeah.

8 Q. Your math is better than mine.
9 Are you familiar with an entity
10 known as Tether?

11 MR. McCARRICK: Object to
12 form.

13 A. I've heard of Tether, yes.

14 Q. And what is Tether?

15 MR. McCARRICK: Object to
16 form.

17 A. To my understanding, Tether is a
18 player in the cryptocurrency industry. They
19 lend. They borrow.

20 Q. All right. Well, speaking of
21 lending, are you aware that before the
22 petition date, Celsius received a loan from
23 Tether?

24 MR. McCARRICK: Objection to
25 form. Outside the scope.

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2 You can answer.

3 A. We had a loan from Tether, yes. I
4 understand that --

5 Q. Oh, sorry. Did not mean to cut
6 you off. Please finish.

7 A. I understood it to be that Celsius
8 did borrow money from Tether and that that was
9 collateralized with different types of
10 cryptocurrencies.

11 Q. Do you understand or do you have
12 an understanding regarding the amount of the
13 loan that Celsius received from Tether?

14 MR. McCARRICK: Object to
15 form. Outside the scope.

16 You can answer.

17 A. I don't know the exact amount, but
18 it was south of a billion dollars, maybe 800
19 million, 7- to 800 million, I believe.

20 Q. And are you aware of the
21 denomination of that loan?

22 MR. McCARRICK: Object to
23 form. Outside the scope.

24 A. My understanding was that the loan
25 was probably stablecoins was what we got,

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2 yeah.

3 Q. So your recollection is roughly
4 800 million in stablecoin from Tether?

5 A. -ish, yeah, around that zip, yup.

6 Q. Okay. So before the petition
7 date, the debtors had borrowed roughly 800
8 million in stablecoin from Tether and
9 according to this chart we just looked at had
10 received stablecoin deposits from customers in
11 connection with the earn program totaling more
12 than \$1 billion. Right?

13 MR. McCARRICK: Object to
14 form. Outside the scope.

15 You can answer.

16 A. Yeah, that's my understanding.

17 Q. So again, doing the math, between
18 Tether and earn, that's approximately or
19 almost \$2 billion worth of stablecoin as of
20 the petition date. Right?

21 MR. McCARRICK: Object to
22 form. Outside the scope.

23 A. Yeah 1 -- let's say 1.8, yeah.

24 Q. Okay. Between 1.8 and 2 billion.

25 A. That's fair --

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2 Q. Is that safe to say?

3 A. Yeah.

4 Q. Okay. What amount of stablecoin
5 are the debtors currently seeking authority to
6 sell?

7 A. About 18 million of stablecoin.

8 Q. And is that 18 million of
9 stablecoin the total amount of stablecoin
10 currently in the debtors' possession?

11 A. That's not related to custody,
12 withheld, or lending collateral, yes.

13 Q. So given that before the petition
14 date the debtors possessed nearly 2 billion in
15 stablecoin, why do the debtors have only 18
16 million of stablecoin available to sell today?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. Well, the Tether loan was
21 liquidated.

22 Q. Okay.

23 A. So, you know, unfortunately they
24 liquidated BTC and I believe some E to pay
25 down that loan.

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2 The 1.8 to \$2 billion of
3 stablecoin, as an ongoing, kind of, business
4 perpetuation was used in normal course to pay
5 for expenses. You know, there was lending
6 that it used. Like I said, the retail lending
7 program was largely stablecoins or dollars.
8 So we would fund loans that way. The mining
9 asset was stablecoins and dollars. So we'd
10 have to fund it that way.

11 There was a lot of stablecoins
12 that went into illiquid deployments. That's
13 part of the issue.

14 Q. So I want to return your testimony
15 to the liquidation of the Tether loan. So you
16 said that that loan was paid back with
17 Bitcoin. Is that right?

18 MR. McCARRICK: Object to
19 form.

20 You can answer.

21 A. It wasn't paid back, it was
22 liquidated.

23 Q. Excuse me, liquidated with
24 Bitcoin.

25 A. Yeah.

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2 Q. But in that case, what happened to
3 the stablecoin that Celsius had borrowed?

4 MR. McCARRICK: Object to
5 form.

6 You can answer if you know.

7 A. Nothing would have happened to
8 stablecoin. What would have happened was the
9 Bitcoin was liquidated. I believe might have
10 been some E too, but ...

11 (Stenographer clarification.)

12 Q. So Celsius remained in possession
13 of --

14 A. Might have been some ETH.

15 Q. So Celsius remained in possession
16 of the stablecoin following the liquidation of
17 the Tether loan?

18 A. The liquidation of the Tether loan
19 had no impact on the stablecoins of Celsius.

20 Q. Okay. Just wanted to confirm
21 that.

22 And so returning to your testimony
23 after that statement. So Celsius just spent
24 the stablecoin in the ordinary course?

25 A. Yes, and invested --

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2 Q. Approx- --

3 A. -- specs -- invested.

4 Q. Approximately 1.8 billion of it?

5 A. Yeah. I -- there was uses of the
6 stablecoin, and clearly most of it got used to
7 pay for operations, for lending, for the
8 mining asset, certain -- certain losses that
9 we had to take that we took. We had to go
10 back and buy cryptocurrencies -- right? --
11 with stablecoins.

12 So, yeah, there was many purposes
13 that stablecoins were used for. Some were
14 operations, some were to buy back coins that
15 were actual losses, and some was mining
16 assets, lending programs, et cetera.

17 Q. So you listed a few things that
18 the stablecoin went to. Do you know the
19 amount of stablecoin that was dedicated to
20 each of those things?

21 A. Well, I think it's pretty safe to
22 say that predominantly the entire mining
23 asset, so call it almost 600 million.
24 Predominantly the entire retail lending book,
25 call it another 400-and-something million.

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2 You're at a billion.

3 There was operating expenses for
4 2021 and 2022 that totaled, off of memory,
5 about a half a billion.

6 And then you had certain
7 currency -- cryptocurrencies that we had to go
8 back and buy because there was losses. Think
9 EFH. So that's how you get to the 1.8 to 2
10 billion.

11 Q. Okay. So just -- so sticking with
12 your math. So mining, lending, and
13 operations, you said 600 for mining, 400 for
14 lending, 500 for operations. That totals
15 1.5 billion. Right?

16 A. Yeah.

17 Q. So would the loss that you just
18 described be 300 million in your estimation?

19 A. Losses in which we had to go back
20 and purchase cryptocurrencies for the accounts
21 so we didn't have a directional position. I
22 don't have that number off the top of my head,
23 but, yeah, it was in that range.

24 Q. Can you explain that a little more
25 of losses for which you had to go back and --

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2 A. Well, let's say --

3 Q. -- purchase cryptocurrency?

4 A. Yeah. Let's say, for example,
5 EFH. We -- we borrowed money from EFH, and I
6 believe this dates back to 2020. Right? We
7 lent money -- we borrowed money from EFH, and
8 we posted Bitcoin and ETH as collateral.

9 When we went to pay down the loan
10 with EFH, they said, We don't have your
11 collateral. So now we thought we had an asset
12 of Bitcoin -- right? -- and now we don't. So
13 we had to use stablecoins to go out and buy
14 Bitcoin so that our risk positions would be
15 neutralized.

16 Q. Understood. Okay. All right.
17 This may retread some of the ground we've just
18 gone over. Let's turn to paragraph 26 of your
19 declaration.

20 A. Of my declaration. Okay.

21 Yes, sir. I'm there.

22 Q. And, actually, before we get
23 there, just one quick question: Is Celsius
24 able to trace stablecoins in its possession to
25 specific transfers made by account holders?

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2 A. The coins go into, like, an
3 omnibus account -- I always struggle to say
4 that word, I'm sorry -- omnibus account. So
5 kind of -- we don't link a specific stablecoin
6 to a customer. We think of them more as
7 fungible.

8 Q. And there's no way to, let's say,
9 analyze the blockchains to determine where it
10 came from before it went to the omnibus
11 account?

12 MR. McCARRICK: Object to
13 form.

14 You can answer.

15 A. To my understanding, it all gets
16 mixed in the omnibus account. So we --

17 Q. Are you now aware -- go ahead.
18 Sorry.

19 A. I was going to say, we can look
20 and say 100 stablecoins were sent from 100
21 different wallets and we have 100 in the
22 omnibus account, but we -- and then when we
23 deploy them, we don't go back in time to say
24 which ones were deployed for -- related to
25 which cryptocurrency obligations that Celsius

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2 has to the customers.

3 Obviously the stablecoins are
4 Celsius', the transfer. The title has been
5 transferred to Celsius in the terms of use.
6 Celsius has the right, which we're describing
7 right here, to pledge, deploy, otherwise
8 rehypothecate, et cetera. So ...

9 Q. But just to be clear, putting
10 aside what Celsius may or may not do in terms
11 of trying to trace stablecoin to their source,
12 my question is could it do so?

13 MR. McCARRICK: Object to
14 form.

15 You can -- you can answer.

16 A. I'm sure in a massive data
17 exercise, you could probably track and trace
18 things. It's all public blockchain. We, kind
19 of, mix it all together in the omnibus wallet
20 and then deploy it from there. So it gets --
21 we didn't in an active managing trace because
22 it wasn't important. We just had the
23 obligation to the customer, the liability to
24 the customer. That's what we tracked.

25 Q. Right. And I just want to be

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2 clear, I'm not trying to pass judgment on
3 whether Celsius should have or did or did not.
4 But it -- so basically your answer, it sounds
5 like your testimony is it may be possible to
6 trace the stablecoin, but it would be -- I
7 think the word you used is "a massive
8 undertaking." Is that right?

9 A. I'm not a blockchain expert. So
10 my understanding is it's possible. We weren't
11 set up that way to do it.

12 If it were to be done, I would
13 think there's a lot of data out there, but it
14 would be a big exercise.

15 Q. Okay. And now we can go to
16 paragraph 26. I apologize we didn't do it
17 before.

18 In the first sentence of that
19 paragraph, you state:

20 "It is my understanding that,
21 prior to the petition date, the
22 debtors monetized stablecoin as
23 needed to meet their fiat
24 obligations in the ordinary course."

25 So you state "it is my

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2 understanding." What is that understanding
3 based on?

4 A. General understanding of how the
5 business operated by, you know, being here for
6 six to nine months, by looking at reports, by
7 having conversations.

8 Q. Okay. What does "monetize" mean?

9 A. They use them -- could either use
10 them as payment or liquidate them to cash, to
11 fiat.

12 Q. And can you explain the process
13 the debtors use for monetizing stablecoin
14 prior to the petition date?

15 A. There's multiple ways in which you
16 could do it. You could go on an exchange and
17 sell it on the exchange, have it wired to your
18 fiat bank account. You could go to a provider
19 like Circle and for effectively no cost, just
20 convert stablecoin to fiat and have it put in
21 your bank account.

22 So the industry works in a way in
23 which fiat and stablecoins are very
24 interchangeable.

25 Q. Okay. How frequently do the

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2 debtors monetize stablecoin prepetition?

3 A. How what, sorry?

4 Q. How frequently do the debtors
5 monetize stablecoin before the petition date?

6 A. I would -- I would -- my
7 understanding would be multiple, multiple,
8 multiple times per day.

9 Q. And you mentioned "fiat
10 obligations." What fiat obligations are you
11 referring to in this sentence?

12 A. Payroll, vendor expense,
13 professional fees.

14 Q. Anything else?

15 A. All ordinary course business, any
16 expenditures related to the activities that
17 Celsius was doing. The vast majority of them
18 were paid in fiat.

19 Q. Is there any reason the debtors
20 would choose to monetize stablecoin as opposed
21 to other types of cryptocurrency?

22 A. Well, stablecoins don't really --
23 you know, if -- you know, you're --
24 stablecoins don't have a risk position next to
25 them, meaning they're not sensitive to prices

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2 because everything is one-for-one for the
3 dollar.

4 So stablecoins act as though, in
5 crypto, that they're almost like fiat. If you
6 were to -- if you were to sell other coins,
7 then you could open up risk position. So if I
8 had customer obligations of 100 Bitcoin and I
9 had 101 Bitcoin in my asset account, I could
10 sell one Bitcoin.

11 But in general, what we would do
12 would be sell Bitcoin. You'd probably earn --
13 you'd probably sell Bitcoin for stables, and
14 then you would have stables that would fund
15 operations.

16 But usually what would happen is
17 you'd manage risk so you were neutral from a
18 asset liability net position; so stablecoin
19 would be effectively the cryptocurrency that
20 you would use for payments, converting to
21 fiat, et cetera.

22 Q. Do you know what fraction of the
23 cryptocurrency monetized by the debtors to
24 meet their fiat obligations prepetition was
25 stablecoin?

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2 MR. McCARRICK: Object to

3 form.

4 You can answer.

5 A. I do not know. I would guess that

6 the vast majority of it was stablecoins that

7 were put into fiat. So liquidated into fiat.

8 Q. And do you know what fraction of

9 those stablecoins were deposited by customers

10 into earn accounts?

11 MR. McCARRICK: Object to

12 form.

13 You can answer if you know.

14 A. What portion of the stablecoins

15 that we used to fund? I would -- I would

16 venture to guess all of them.

17 Q. So all of the stablecoin that the

18 debtors monetized prepetition was associated

19 with customer accounts?

20 MR. McCARRICK: Object to

21 form.

22 You can answer.

23 A. Yeah, to my understanding. We

24 didn't have a perfect process on custody, but

25 we would exclude custody from it. So, yeah, I

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2 mean, the vast, vast, vast majority of them
3 would be related to earn accounts.

4 Q. Okay. Do you know when the last
5 time was before the petition date that the
6 debtors monetized stablecoin?

7 A. I would assume we did it right
8 before the -- right leading up to the petition
9 date, to the filing. I mean, any payments
10 across cryptocurrency, gas fees, things like
11 that, you pay a lot in stablecoins. So
12 you're -- in reality, you're using stablecoins
13 multiple times.

14 Q. Okay. And do you have a sense of
15 how much stablecoin was monetized?

16 A. I don't know off the top of my
17 head. That was -- I was not the CFO, and this
18 was handled largely with the CFO and the
19 treasury team. I wasn't part of those
20 conversations.

21 Q. Do you know whether the debtors
22 have continued to monetize stablecoin after
23 the petition date?

24 A. Well, we're not able to sell,
25 trade cryptocurrency.

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2 Q. So the answer is no, they haven't?

3 A. So the answer is no. Yeah.

4 Q. Okay. Let's turn to paragraph 24
5 of your declaration. And let me know when
6 you're there.

7 A. Yes, sir.

8 Q. Okay. In the first sentence of
9 that paragraph, you state: "Post-petition,
10 the debtors have faced continued liquidity
11 challenges."

12 Do you see that?

13 A. Yes.

14 Q. Okay. When do the debtors project
15 they will run out of liquidity?

16 A. On a consolidated basis of the
17 debtors, in the first quarter of 2023.

18 Q. Is there any more specific
19 projection for when the liquidity runs out
20 beyond the first quarter of 2023?

21 A. It's really -- it gets very tight
22 at the end of February, and we go negative in
23 the beginning of March.

24 Q. Okay.

25 A. That's on a consolidated basis. I

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2 think the mining -- the mining entity, I
3 believe, runs out of cash in January, late
4 January.

5 Q. And when do the debtors project
6 they will run out of liquidity if they're
7 permitted to sell stablecoin?

8 A. Stablecoin sale would at least
9 give us another month of runway, if not a
10 little bit more.

11 Q. So -- I'm sorry.

12 A. If not a little bit more. So that
13 should get us into probably April.

14 Q. Okay. Do the debtors intend to be
15 out of bankruptcy before that time?

16 A. It's highly unlikely. We would
17 love to be, but --

18 Q. Why -- I'm sorry, I feel like I
19 keep cutting you off, and that's my fault.
20 You said, "It's highly unlikely, we'd like to
21 be." Was there anything you wanted to say?

22 A. Of course we would like to be, but
23 it's doubtful that we'll be out in early
24 second quarter. It's probably a few months
25 later if we do everything properly.

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2 Q. So let's break that answer down.

3 So why do you say it's highly unlikely?

4 A. Well, we have to -- I mean, we're
5 in a dual-track process right now where we're
6 going through sales and marketing of the
7 assets. We're also working on a standalone
8 reorganization plan working with the committee
9 and their professionals as well.

10 You know, we're just in a world in
11 which we're trying to maximize value for the
12 estate. I think there's also key legal
13 questions, to my understanding, that still
14 need to be answered, investigations that need
15 to be finished.

16 But most importantly for me, I'm
17 working on the reorganization plan, and my
18 understanding of the timelines and, kind of,
19 how the plan gets approved -- gets commented
20 on, gets approved and -- right? -- is early
21 second quarter of 2023 is a stretch to get out
22 of bankruptcy.

23 Q. What happens -- what happens if
24 the debtors run out of liquidity before
25 they're able to exit from bankruptcy?

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2 A. Well, that would be administrative
3 bankruptcy, and you'd effectively cease to
4 operate in this Chapter 11 proceeding, is my
5 understanding.

6 Q. Are the debtors trying to avoid
7 that outcome?

8 A. Absolutely.

9 Q. Well, so I'd like you to, then,
10 kind of, reconcile those two things for me
11 because the debtors are running out of money.
12 Right now, even with the sale of stablecoin,
13 they're going to run out, let's say, by April,
14 but you say it's highly unlikely that the
15 debtors will be out of bankruptcy by April.

16 So what's the plan?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. Well, I think we have to raise
21 liquidity. Stablecoins, in my opinion, is the
22 cheapest and easiest way to fund the case.
23 That does not mean that the case is completely
24 funded. We'd have to go -- we'd have to go
25 out and either raise financing, debt

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2 financing, which is incredibly expensive.

3 This comes at a major cost to the estate, and

4 the value that we'll be able to provide to

5 borrowers. Debt financing is incredibly

6 expensive. Stablecoin, effectively no cost to

7 liquidate.

8 We also have the ability -- right?

9 -- to, if -- if so is approved, if said is

10 approved, we have the ability to use coins to

11 borrow, and we can fund that way, either

12 through DeFi protocols or centralized

13 counterparty. That's going to be cheaper than

14 DIP financing. And then, of course, you could

15 sell other coins to fund the case. I think --

16 Q. Are those are all --

17 A. I think --

18 Q. Sorry. Go ahead.

19 A. Yeah, sorry. I think we've pulled

20 the expense management lever really hard.

21 We've gone from 920 employees to about 167

22 employees as of, really, last week.

23 So I think that we're in a world

24 in which, you know, we've cut expenses, we've

25 cut vendor costs. We've gotten rid of -- out

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2 of all of our debtors' real estate offices.

3 So we've tried to reduce the cost of this case
4 as much as we can.

5 I think that lever, albeit, we can
6 still optimize a little but, but that's been
7 pulled about as hard as we can without
8 jeopardizing our ability to furnish diligence
9 questions, help out with the sales process, or
10 come up with the reorg plan.

11 So I don't think cutting expenses
12 is going to be a significant benefit at this
13 point. So I think it really comes down to
14 financing vis-à-vis the coins, DIP financing,
15 and other protocols that we can borrow
16 against.

17 Q. Okay. Yeah. So you mentioned
18 three possible ways to increase liquidity:
19 DIP financing, borrowing, or selling coins.
20 Right?

21 A. Yeah.

22 Q. Okay. So are those all options
23 the debtors are considering pursuing?

24 A. We've analyzed all options.

25 Q. Have the debtors taken any steps

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2 towards actually achieving any of those three
3 things?

4 A. Yeah, the sale of stablecoins.
5 That's what we're here discussing today. This
6 is the cheapest and the first step. We
7 also --

8 Q. Okay. Anything else?

9 A. Well, we did do -- working with
10 Centerview Partners, there was a DIP process
11 early on in the case, and I believe the
12 decision was to pause that given its cost. So
13 we're hoping we don't have to go to the DIP
14 financing.

15 Q. All right. But sitting here
16 today, is the -- besides the sale of
17 stablecoins, is the debtor doing anything else
18 to decrease liquidity?

19 A. We need approval to be able to
20 deploy coins into DeFi protocols or to use
21 them as collateral to borrow against. We've
22 analyzed the costs and the risks. We have not
23 done anything that would require approval, to
24 my understanding.

25 Q. So sitting here today, these are

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2 all hypothetical ways of bringing in
3 liquidity, but there is no certainty that any
4 one of them will actually bring in liquidity?

5 A. The --

6 MR. McCARRICK: Object to
7 form.

8 You can answer.

9 A. The most certain one is the sale
10 of stablecoins.

11 Q. Okay. But that by itself is not
12 sufficient to fund these cases as long as you
13 think that --

14 A. I anticipate that the case -- the
15 case will go past April. That's just -- first
16 time I'm in Chapter 11. So it's my, you know,
17 kind of, semi-educated take on this. We'll
18 need some other ways of financing.

19 But, first, stablecoins is the
20 cheapest. It's what we use in our ordinary
21 course. It's how we operate. It's how the
22 industry operates. So that's the relief we're
23 asking for right now.

24 Q. Okay. And you mentioned, part of
25 your answer before, was that in order to exit

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2 bankruptcy responsibly, I think was the words
3 you used, you're going to need more time than
4 you would have just to be read. Is that
5 right?

6 A. Again, with my, kind of,
7 uneducated, nonexperienced eye, and looking at
8 the, kind of, legal calendar and how things
9 progress, it's probably going to be a little
10 bit more than April. That's my guess.

11 Q. And you mentioned in your
12 testimony what I think you called "key legal
13 questions" that need to be resolved before the
14 company can exit from bankruptcy.

15 Do you remember that testimony?

16 A. Yeah, I believe they called --

17 Q. What are those -- go ahead.

18 A. -- you know, key questions of
19 first impression or key, you know, gating
20 legal questions.

21 Q. What are those key legal
22 questions?

23 A. I'm probably not the right person
24 to ask that, you know. I can give you --

25 Q. Well, I mean -- go ahead. I

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2 didn't mean to cut you off. Go ahead.

3 A. Yeah. I said I'm probably not the
4 right person to ask that. The key legal
5 questions are the ones that are being brought
6 up for the judge to decide through the
7 procedure and process.

8 Q. Are there other legal questions or
9 key legal questions that you're referring to?

10 MR. McCARRICK: Object to
11 form.

12 A. Yeah. I think -- I mean, I think
13 the key -- one of the key legal questions is
14 the title of the -- of -- you know, for us,
15 terms and use is clear, crystal career. But I
16 don't think that the judge has ruled on that
17 yet.

18 Q. But the judge is going to rule on
19 that next month. Right?

20 A. I don't know the legal calendar.
21 I don't have it in front of me.

22 Q. Okay. Well, let me ask you: Are
23 there any other key legal questions besides
24 the question of title over the earn assets
25 that you were referring to when you said there

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2 are key legal questions that need to be
3 resolved before we can exit bankruptcy?

4 MR. McCARRICK: Object to
5 form.

6 You can answer.

7 A. Custody. Is custody separate from
8 earn, and does the customer retain title? I
9 think that's a big one.

10 Q. Okay.

11 A. Obviously in our stablecoin
12 motion, we're not -- we're excluding custody
13 coins, withheld coins, and lending coins. I
14 think the lending program and how you deal
15 with both the collateral as well as the
16 outstanding balance that the customers owe is
17 also a key gating legal question. I think
18 those are three of them that come to my mind.

19 Q. Okay. And it's your understanding
20 those questions aren't likely to be resolved
21 before April?

22 A. Oh, I don't know that answer. I
23 mean, we also have to do a reorganization plan
24 and get through the sales process. There's
25 investigations going on. So my April comment

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2 was not just about the legal questions, it was
3 about the entire case.

4 Q. Got it. Okay.

5 CERTIFIED STENOGRAPHER:

6 Counsel, can we take a break?

7 MR. HERSHEY: Absolutely.

8 Mr. Ferraro, are you okay with
9 taking a break?

10 THE WITNESS: I am. Thank
11 you.

12 MR. HERSHEY: Let's go off the
13 record and we can talk about a time.

14 THE VIDEOGRAPHER: Stand by.
15 The time now is 10:38 a.m. This
16 concludes Media 1. Off the record.

17 (Recess taken from 10:38 a.m.
18 to 10:59 a.m.)

19 THE VIDEOGRAPHER: The time
20 now is 10:59 a.m. This begins Media
21 2. On the record.

22 BY MR. HERSHEY:

23 Q. Okay. Welcome back, Mr. Ferraro.
24 Can you hear me okay?

25 A. Yes. Yes, I can, Mr. Hershey.

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2 Thank you.

3 Q. Okay. I don't have too many more
4 questions. I actually wanted to return to a
5 few of your answers. I think that will be
6 easier before I continue through, so I'd ask
7 just to, sort of, return to a few things we
8 discussed.

9 The first thing I want to return
10 to is your testimony regarding whether Celsius
11 can trace the stablecoins it intends to sell.

12 I want to distinguish between
13 tracing things on the blockchain and tracing
14 things within Celsius' platform.

15 Just to be clear, once the
16 stablecoins are deposited onto Celsius'
17 platform and moved around within Celsius, at
18 that point can Celsius trace them, their
19 movements within Celsius' platform?

20 A. We do not trace cryptocurrencies
21 specifically across the platform. We look at
22 it where it is within our frameworks of, like,
23 liquidity, where it's deployed, et cetera.

24 So honestly I'm not a blockchain
25 expert, so -- but I do know that the way that

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2 we run it is not to, kind of, trace from one
3 point -- spot to the next because the coins
4 are fungible.

5 Q. Right. Right. Okay. That makes
6 sense. And you say you're not a blockchain
7 expert. Is there someone at Celsius you're
8 aware of with more knowledge of these subjects
9 who might be able to discuss more
10 authoritatively whether the coins are
11 traceable?

12 MR. McCARRICK: Object to
13 form.

14 You can answer.

15 A. Yeah, I think you -- you know,
16 Oren Blonstein would be -- he runs product.
17 He would be, you know -- and he's been with
18 Celsius for a longer period of time.
19 Obviously in product, you have to understand
20 the systems very tightly. So he would
21 probably be a good person to ask.

22 Q. Okay. Anyone else you can think
23 of?

24 A. Probably some of the folks within
25 the technology team.

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2 Q. So is that, like, Nuke Goldstein?

3 A. Nuke or Guillermo, the head of
4 technology.

5 Q. Okay. Let me ask you one more
6 question before I return to what we were
7 talking about. And this is, again, so I
8 understand the mechanics.

9 Let's say I'm an earn customer.
10 This is before the petition date, before even,
11 let's say, April 15 of 2022. I'm an earn
12 customer and I take out a loan, and I want to
13 pledge my coins that are associated with my
14 earn account as collateral for that money.

15 Would those coins then be moved
16 out of the earn account into a separate
17 collateral wallet somewhere? Or how would
18 they travel, if at all, across Celsius'
19 platform once I pledge those assets as
20 collateral?

21 MR. McCARRICK: Object to the
22 form and the characterization.

23 You can answer.

24 A. It would be marked no longer as
25 earn, it would move to the collateral account,

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2 and it would not accrue rewards.

3 Q. So just to be clear, when you say
4 it would still be marked no longer as earned.
5 So would the change only be on a ledger, or
6 would there actually be movement of the coins?

7 A. I don't know the specific answer
8 to whether it was moved or not, but I do know
9 that the -- that we would code it no longer an
10 earn. It would now be coded as part of the
11 collateral for the lending program.

12 Q. Got it. So there, at least, was a
13 ledger total, whether there was a
14 corresponding movement of coins, you don't
15 know?

16 MR. McCARRICK: Object to
17 form.

18 You can answer.

19 A. Yeah. I mean, in the -- in our
20 back office system -- right? -- there's some
21 sort of a ledger entry. I'm not sure that the
22 coin is moved or not. I don't know.

23 Q. And who -- who would know whether
24 the coin is moved or not?

25 MR. McCARRICK: Object to

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2 form.

3 You can answer.

4 A. The deployment team, the product
5 team. I think Oren would be a good one to
6 ask.

7 Q. All right. But now we can return
8 to what we were talking about before. I
9 appreciate your indulgence.

10 So I asked you before how the
11 debtors intend to get out of bankruptcy, and
12 you said right now there are two potential
13 paths that are being considered. There's a
14 sale process that's being pursued, and also a
15 standalone plan option that's being pursued.

16 Is that an accurate representation
17 of your testimony?

18 A. Yes.

19 Q. Okay. Had the debtors
20 communicated with any potential bidders
21 regarding their preference between a sale or a
22 standalone plan?

23 MR. McCARRICK: Object to
24 form.

25 You can answer.

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2 A. Our preference is to maximize
3 value for the estate, not to do one or the
4 other. We work closely with the committee on
5 the reorganization plan, and we make sure that
6 we're aligned there. But the goal is single,
7 single purpose under dual-track process to
8 maximize value for the estate for the benefit
9 of our creditors.

10 Q. So just to be clear, the debtors
11 have no preference between a sale or a
12 standalone plan?

13 A. Only to maximize value would be
14 the preference.

15 Q. Got it. And then either one of
16 those could potentially maximize value?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. Yeah, I -- that's the goal. Yes.

21 Q. Okay.

22 A. Those are the two --

23 Q. And -- sorry. Go ahead.

24 A. Those are the two -- those are the
25 two types of transactions that we're focused

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2 on. Right? The sale process is tricky in a
3 downturn. Right? It's hard selling assets.
4 There's very little capital out there. But,
5 you know, we're actively doing it. I've sat
6 on hours of diligence calls related to
7 potential bidders asking questions and
8 providing documentation.

9 Q. And just to be clear, the debtors
10 have not formed any conclusion regarding which
11 process is more likely to maximize value?

12 A. We haven't received the bids. We
13 can't conclude until we see what people are
14 willing to pay. So no.

15 Q. Okay. And I take it, therefore,
16 just to go back to my original question, the
17 debtors have not communicated with any
18 potential bidders regarding their preference
19 for a sale process or a standalone plan
20 process?

21 MR. McCARRICK: Object to
22 form.

23 You can answer.

24 A. I mean, no. Our goal is to
25 maximize value. We have to go through both

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2 processes.

3 Q. Okay. Again, returning to some of
4 your prior testimony, you testified that --
5 well, let me -- sorry, I take that back. Let
6 me just ask you a fresh question.

7 When do the debtors anticipate
8 proposing a plan?

9 A. We're currently actively working
10 with the committee on this today. We were
11 supposed to -- we are having a meeting. I
12 wasn't able to participate because I'm here.
13 But the internal team, our advisors, the
14 committee, and the committee's advisors are
15 discussing the current thinking around a
16 reorganization plan that's led by the product
17 team, Oren's team. I sit on those. I'm
18 incredibly involved in those -- in that
19 process.

20 This is -- we take this as a very
21 serious process. This is how we're going to
22 return value back to the estate and to the
23 creditors, this and the sale process. So,
24 yeah, and we work with the committee
25 hand-in-hand with this.

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2 Q. So I appreciate the answer. But I
3 just want to hone in on my specific question.
4 I understand the debtors are -- sorry, I
5 thought someone said something.

6 I understand the debtors are
7 working on proposing a plan. My question is:
8 When do the debtors intend to propose a plan?

9 MR. McCARRICK: Object to
10 form.

11 A. I mean, we have to -- we have
12 questions we're working through with the
13 committee. If you're asking when do I hope?
14 Okay.

15 Q. Sure.

16 A. When do I hope? I hope that we
17 can lock down on what a reorganized entity
18 looks like by year end and then we can start
19 working on the disclosure statement.

20 Q. Is it safe to say the debtors are
21 trying to propose a plan as soon as reasonably
22 possible?

23 MR. McCARRICK: Object to
24 form. Beyond the scope.

25 You can answer.

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2 A. Tirelessly, seven days a week,
3 nonstop, yes, sir.

4 Q. And the debtors wouldn't
5 potentially do anything to delay its proposal
6 of a plan. Right?

7 MR. McCARRICK: Object to
8 form.

9 You can answer.

10 A. There's nothing more that we want
11 to do than to get out of Chapter 11 the right
12 way.

13 Q. So the answer is yes, the debtors
14 would not intentionally delay the proposal of
15 a plan. Right?

16 MR. McCARRICK: Objection.

17 Asked and very much answered.

18 THE WITNESS: Can I answer?

19 Q. You can answer again.

20 MR. McCARRICK: Answer again.

21 THE WITNESS: Oh, sorry.

22 A. We are doing everything we can to
23 get out as fast as possible. Delays hurt us,
24 hurt the estate, hurt our customers, hurt our
25 stakeholders. We want to get out of this

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2 process and do it the right way.

3 Q. Thank you. All right. This is
4 actually my last line of questions, so we're
5 almost done. And I will pass you on to
6 someone else who wants to ask questions.

7 A. Okay.

8 Q. Are you aware, Mr. Ferraro, that
9 since Celsius filed for bankruptcy, individual
10 account holders have filed letters and
11 statements on the bankruptcy court docket
12 regarding this bankruptcy?

13 MR. McCARRICK: Objection to
14 form.

15 You can answer.

16 A. Yes, I'm aware. The judge has
17 also spoke about the letters.

18 Q. Have you read any of those
19 letters?

20 A. I have read some of the letters,
21 yes.

22 Q. Do you remember which ones?

23 A. There's too many to remember.

24 I -- I went through over 50 letters. There
25 was a lot of letters.

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2 Q. Sorry. Keep going.

3 A. Yeah, the letters that are on
4 Stretto?

5 Q. Yeah.

6 A. I was able to read letters, yes.

7 Q. Did you just testify that you've
8 read over 50 of them?

9 A. Yeah. I've read numerous letters,
10 lots of letters, yeah. And they're all
11 heartbreaking -- heartbreaking letters. It's
12 a very difficult read. People are in a very
13 difficult position.

14 Q. So, again, tell me -- tell me more
15 about that, because I am curious to hear the
16 reaction to the letters since you just
17 described them as "heartbreaking."

18 Is there anything more you would
19 like to say?

20 MR. McCARRICK: This is well
21 outside the scope, but I want to
22 hear Mr. Ferraro's answer.

23 So you can answer.

24 A. I mean, I think we're aligned --
25 right? -- the creditors want their coins back.

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2 And the company, its advisors, the committee,
3 its advisors are working tirelessly to do
4 that.

5 There is nothing -- there is
6 nothing out there that is, like, keep on, you
7 know -- stay in bankruptcy, keep on processing
8 the Chapter 11. No. We want to get coins in
9 kind back to customers as soon as possible,
10 and I think that's consistent with the message
11 in the letters.

12 Q. Are you aware whether anyone else
13 at Celsius has read those letters?

14 A. I don't --

15 MR. McCARRICK: Object to
16 form.

17 You can answer.

18 A. I don't -- I'm not aware. I don't
19 track the reading of letters.

20 Q. Have you discussed the letters
21 with anyone else at Celsius?

22 A. Likely, but not off of memory. I
23 can't -- you know. I'm sure it's come up.

24 Q. Okay. So it seems from your
25 testimony that you do think it's important

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2 that Celsius listen to the concerns of its
3 customers.

4 A. The customer --

5 MR. McCARRICK: Object.

6 Q. Is that right?

7 THE WITNESS: Sorry.

8 MR. McCARRICK: Object to

9 form. Well outside the scope.

10 Vague. Not really sure what's going
11 on here.

12 But you can answer.

13 A. I think our stakeholders with the
14 customers -- right? -- kind of at the center
15 of this plan, it's important to understand
16 where they're coming from, right? We work for
17 the benefit of the estate. So, yes, I think
18 it's important.

19 Q. Have you spoken with any of the
20 debtor/stakeholders regarding a potential plan
21 of reorganization?

22 A. Any of the debtors what?

23 MR. McCARRICK: Ob- --

24 THE WITNESS: Oh, sorry.

25 MR. McCARRICK: I'm sorry, I'm

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2 just going to object -

3 MR. HERSHEY: Let me re-ask

4 the question and then you can

5 object, T.J. --

6 MR. McCARRICK: Yup.

7 MR. HERSHEY: -- so he hears

8 it and I'll speak a little more

9 clearly.

10 Q. Have you spoken -- you personally,
11 have you spoken with any of the
12 debtor/stakeholders regarding a potential plan
13 of reorganization?

14 MR. McCARRICK: Object to
15 form. Outside the scope.

16 You can answer.

17 A. I speak with the committee,
18 they're stakeholders. We have -- we have
19 regular conversations.

20 Q. Anyone else?

21 A. I've discussed it in my 341
22 testimony about the dual-track process. I
23 have not asked specifically to the employees
24 that are working on the plan if they are also
25 a customer. Yeah.

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2 Q. Okay. So just to be clear, you
3 mentioned speaking with members of committee
4 about the potential plan of organization.

5 Is there any other stakeholders or
6 debtors with whom you've had conversations
7 regarding a potential plan of reorganization?

8 MR. McCARRICK: Objection.

9 Outside the scope.

10 You can answer.

11 A. I told you the 341 testimony is
12 with stakeholders; creditors ask questions at
13 the end. Some of it was about maximizing
14 value for the estate. I would have discussed
15 the dual-track process.

16 And then, you know, in
17 conversations with potential buyers, every now
18 and then the reorganization, standalone
19 reorganization comes up, and my discussion
20 with them is the same as I'm having here; it's
21 a dual-track process, we have to execute
22 across both to maximize value for the estate.

23 Q. Right. Okay. I just want to be
24 crystal clear. I'm including advisors of
25 stakeholders as well in this question.

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2 Are there any other stakeholders
3 or their advisors with whom you have discussed
4 plan of reorganization?

5 MR. McCARRICK: Object to
6 form.

7 You can answer to the extent
8 you understand.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Q. And those are the only
23 conversations I'm asking about.

24 A. Yeah.

25 Q. So I appreciate the answer.

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2 Have you spoken with any
3 individual account holders since becoming CEO?

4 MR. McCARRICK: Object to
5 form.

6 You can answer.

7 A. The committee are account holders.
8 I've spoken with them.

9 Q. Anyone -- any account holders
10 besides the members of the committee?

11 MR. McCARRICK: Object to
12 form. Outside the scope. Don't
13 know where this is going. Let's
14 move it along, Sam.

15 A. I think I've, you know --

16 Q. You can answer.

17 A. On the 341 hearing, there was
18 creditors on the 341 hearing.

19 Q. Okay. So other than the 341
20 hearing and other than conversations with the
21 committee members, have you had -- since
22 becoming CEO, have you had any conversations
23 with Celsius account holders?

24 MR. McCARRICK: Object to
25 form.

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2 A. Employees. But I don't know if
3 they're account holders because I don't ask
4 them. Oh, and I --

5 Q. So is it --

6 A. -- I did --

7 Q. Do you agree -- sorry. Go ahead.

8 A. And I did have -- thank you. My
9 memory is now jogged. I did have a
10 conversation with one account holder, yes.

11 Q. Can you describe that
12 conversation?

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q. Okay.

19 A. So that's the only -- that's the
20 only person that I can think of outside the
21 committee, the committee's advisors, internal,
22 and our advisors.

23 Q. Okay. Great.

24 MR. HERSHEY: That is actually
25 the end of my questions,

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2 Mr. Ferraro. I'm just going to
3 reserve the right if your attorney
4 asks you questions at the end of the
5 deposition, to then do some further
6 questioning of you. But other than
7 that, I'm finished. Thank you very
8 much for your time. I appreciate
9 it.

10 And I will pass the witness.

11 THE WITNESS: Thank you, Sam
12 Hershey. Thank you.

13 MR. McCARRICK: I think the US
14 Trustee is on -- on deck.

15 MS. CORNELL: You want to take
16 a break?

17 THE WITNESS: I'm okay.

18 MS. CORNELL: Yeah? You sure?

19 THE WITNESS: Yeah. Thank
20 you.

21 MR. McCARRICK: Let's go off
22 the record.

23 THE VIDEOGRAPHER: The time
24 now is 11:15 a.m. This concludes
25 Media 2. Off the record.

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2 (Recess taken from 11:15 a.m.

3 to 11:17 a.m.)

4 THE VIDEOGRAPHER: The time

5 now is 11:17 a.m. This begins Media

6 3. On the record.

7 EXAMINATION BY

8 MS. CORNELL:

9 Q. This is Shara Cornell, S-h-a-r-a
10 C-o-r-n-e-l-l, on behalf of the office of the
11 United States Trustee.

12 Okay. So I had a couple of
13 follow-up questions and some additional
14 questions also.

15 Previously, at the beginning of
16 your deposition, you discussed your
17 background, and specifically your different
18 appointments while at Celsius.

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. Thank you. Also earlier in your
18 testimony, you discussed a little bit about
19 your educational background and your
20 employment background.

21 As part of that testimony, as I
22 understand it, you did not have any specific
23 experience with cryptocurrency or related.

24 Can you please explain just a
25 little bit about how you educated yourself

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2 prior to joining Celsius?

3 A. Yeah. You know, spending almost
4 two decades at JPMorgan, I tend to view the
5 world as a bank. I tend to see things as a
6 risk/return type of lens, risk management.

7 So when I joined Celsius, I think,
8 in the negotiations I was able to study --
9 right? -- that's what I do. I like to read up
10 and study things.

11 And in my mind, I, kind of, look
12 at cryptocurrency as another set of assets
13 that fits into the shelf of my mental model of
14 how to think about risk.

15 Q. Okay.

16 A. So for me it wasn't that different
17 to think about a fiat or a stablecoin or about
18 a cryptocurrency token versus a loan position
19 or something like that. It comes with risk
20 and reward and balance sheet -- right? And
21 that's what I did for two decades was balance
22 sheet management.

23 Q. What about the blockchain itself
24 and how it worked and how assets are
25 transferred on the blockchain?

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2 Was there any specific ways that
3 you educated yourself on the workings of that?

4 A. Well, there's a lot of stuff out
5 there to read, right? I mean, it's nothing
6 more than a super-sized ledger where multiple
7 copies and people have -- it's all public,
8 people have access to it.

9 So if you think about it in a
10 world of it's just recording transactions, it
11 makes it pretty simple.

12 Q. Did you own any cryptocurrency
13 prior to joining Celsius?

14 A. No. I bought my first Bitcoin
15 yesterday.

16 Q. It's a good time a buy.

17 A. Yeah. I wasn't able to buy that
18 much. It was only about probably 1/20 of a
19 Bitcoin. But I did want to see the
20 experience, so ...

21 Q. At times during your earlier
22 testimony, you referred to Kirkland & Ellis as
23 your "advisors."

24 For the record, can you just
25 clarify in what capacity Kirkland & Ellis

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2 represents you and whether or not you have
3 your own personal counsel with respect to
4 Celsius?

5 A. Yeah. So Kirkland & Ellis is
6 legal advisors to the debtors, to the company.
7 I have my own legal representative, Paul
8 Hastings --

9 Q. Okay.

10 A. -- is my pool coverage.

11 Q. Thank you. I'm going to try not
12 to repeat questions that were asked or
13 answered earlier, but sometimes I just need to
14 re-ask them to make sure that it flows a
15 little bit and it's not coming out of nowhere.
16 So I apologize.

17 The interrogatory responses that
18 were released earlier, did you provide any of
19 the responses to the interrogatories?

20 MR. McCARRICK: Object to
21 form.

22 You mean the written
23 deposition questions?

24 MS. CORNELL: The written
25 depo- -- yeah. Is that --

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2 MR. McCARRICK: I think that's
3 what he would probably refer to them
4 as.

5 Q. The written deposition questions.

6 A. I didn't craft any of them.

7 Q. Do you know who from Celsius did
8 or was a part of those answers?

9 A. I only know the single meeting
10 that I was on.

11 Q. Okay.

12 A. And, like I said, I was
13 multitasking. Unfortunately, in my job I'm in
14 meetings all day. So what I do is multitask
15 all day long. And I was prepping, reading the
16 declarations, reading the motion on
17 stablecoins. I honestly -- I think Oren
18 Blonstein was on the call. But I can't even
19 recall.

20 Q. Uh-huh. You testified earlier
21 that today's testimony is in connection with
22 the deployment of coins and the terms of use.

23 Just for the record, are you
24 familiar with the terms of use?

25 A. I'm not an expert. I didn't craft

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2 them. But I've read through them so I'm
3 familiar with them in general.

4 Q. Were you employed at Celsius when
5 they were drafted?

6 A. I started working at Celsius
7 March 21, 2022. So that probably is somewhere
8 around when the custody was launched. So they
9 would have been drafting, but I wasn't part of
10 those conversations or the drafting. So ...

11 Q. Do you --

12 A. I would assume that that was going
13 on while I was at Celsius but in a different
14 capacity.

15 Q. In a different capacity.

16 Under -- we've been discussing
17 drafts, like 1, 2, 3, 4, 5, 6, 7, 8. Around
18 the time that you started, are you aware of
19 which draft number would have been employed by
20 Celsius?

21 A. It would have been between 6 and
22 8, is my understanding. And I say that
23 because I believe 8 is when the custody was
24 launched. And I joined March. And I believe
25 custody was launched in mid-April. So we

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2 were, kind of, right between those two
3 versions.

4 Q. After you were immediately
5 employed by Celsius until today's date, were
6 there any amendments to the terms of use that
7 you're aware of?

8 A. I think that was the Version 8
9 that came out, I believe. I think when I
10 joined it would have been 6 and then 8.

11 Q. Were there any suggestions to
12 further revise or amend the terms of use since
13 you've been employed at Celsius?

14 A. I --

15 MR. McCARRICK: Object to
16 form.

17 Just exclude anything that you
18 know solely from legal counsel.

19 Otherwise you can answer based on
20 anything --

21 A. I'm not part of those
22 conversations. I have not been.

23 Q. If there were to be an amendment,
24 are you familiar with what the process would
25 be for there to be an amendment ratified or

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2 instituted by Celsius?

3 A. No. Because in bankruptcy we're
4 not talking about amending the terms of use,
5 and that's my focus.

6 Q. So you wouldn't be familiar with
7 the amendment process outside of bankruptcy if
8 Celsius was still operating in its regular
9 course?

10 A. I would only -- from what I've
11 heard, I would expect that that would
12 continue. Between legal and regulatory, you
13 know, they would, with product, draft the
14 terms of use, make any changes, broadcast
15 that, et cetera. I think in these materials
16 it's been explained, kind of, how we
17 communicated with customers and how that was
18 done.

19 Q. I understand. I just want to try
20 to get a little bit more information about how
21 the process for approving or ratifying the
22 amendments would have occurred at Celsius
23 itself, not with respect to customers.

24 Would it have been approved by the
25 board? Would it have been approved by

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2 separate division heads? What would the
3 process have been with respect to Celsius
4 exclusively?

5 MR. McCARRICK: Object to
6 form.

7 You can answer.

8 A. I do not know. All I know is that
9 in listening and being a part of this, that
10 legal and regulatory teams were the primary
11 drafters of this, and that they would have had
12 approvals to go through.

13 In today's world that I operate
14 in, any cha- -- I mean, we wouldn't make
15 changes to the terms of use; it would make no
16 sense. But if we did, it would go through the
17 special committee, right? But in ordinary
18 course before? I don't know the process. I'm
19 sorry.

20 Q. Okay. Other than Kirkland &
21 Ellis, who are outside counsel for Celsius?

22 A. I know Akin Gump represents us on
23 certain matters. We have local counsel in
24 Israel and Serbia. I cannot remember their
25 names. I apologize.

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2 Q. Sure. As part of the
3 interrogatory responses -- I believe it was
4 Interrogatory Number 1 -- there were
5 references made to outside counsel that may
6 have assisted with the drafting of the terms
7 of use.

8 Are you familiar with which law
9 firm that would be?

10 A. I do not know. This was before my
11 time.

12 Q. So is it your understanding that
13 it would be a law firm that is not currently
14 employed by Celsius?

15 A. I do not know.

16 Q. Are you familiar with the firm
17 Latham & Watkins?

18 A. Yes.

19 Q. Are Latham & Watkins regulatory
20 counsel for Celsius?

21 A. Thank you, yes. Sometimes I need
22 a memory. Sorry, Latham is our regulatory
23 counsel. I was thinking in the Chapter 11
24 construct. I'm sorry.

25 Q. Oh, don't worry about it. There's

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2 a lot of -- there's a lot of firms involved so
3 it's understandable.

4 A. They would have been involved, I
5 would think, working with regulatory and legal
6 on the terms of use.

7 Q. Have they been employed by Celsius
8 during your entire tenure?

9 A. My -- yes. During my tenure and,
10 I believe, before. I don't know when it
11 started, but I know the relationship is
12 pre- -- has been going on for a while.

13 Q. So would it be fair to say that if
14 there were outside regulatory counsel that
15 assisted in the drafting of the terms of use,
16 it would have been Latham & Watkins?

17 MR. McCARRICK: Object to
18 form.

19 You can answer to the extent
20 you know.

21 A. I would -- I would assume they
22 would have been involved, yes.

23 Q. Okay. Do you know who Ron Deutsch
24 is?

25 A. He's the general counsel for the

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2 company, Celsius, yeah.

3 Q. How long has he been employed by
4 Celsius? Your knowledge.

5 A. Over a year. I don't know if he
6 started in 2020 or 2021. I believe it was
7 2021. Mid/early 2021.

8 Q. So he's been general counsel since
9 you've been employed by Celsius?

10 A. Yes.

11 Q. Are you familiar with his
12 background?

13 A. Generally. Not -- not the firms
14 he worked for. I know he did represent
15 financial services clients.

16 Q. Okay. A little bit earlier you
17 made reference to Joseph Golding-Ochsner. Are
18 you familiar with him?

19 A. Yes.

20 Q. Do you know what his position is
21 at Celsius?

22 A. He's on the legal team, on the
23 internal legal team.

24 Q. And what about Yarden Noy?

25 A. He's on the regulatory team.

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2 Q. And what about Roni Cohen-Pavon?

3 A. He's on the regulatory team as
4 well. He leads the regulatory team.

5 Q. He leads the regulatory. I just
6 listed four different attorneys that are
7 employed by Celsius.

8 Were all four of those attorneys
9 employed -- strike that.

10 Since you were employed at
11 Celsius, have all four employees -- have all
12 four of those employees been employed by the
13 legal department at Celsius?

14 A. And the reg department, yes. They
15 were all -- all four of them have been here
16 since my tenure.

17 Q. Can you explain a little bit about
18 the legal and the regulatory teams. Are they
19 two separate and distinct teams?

20 A. Yeah, two separate and distinct
21 teams. The regulatory team is lead by Roni
22 Pavon, he's on -- is also an ExCo member. And
23 the legal team is ran by Ron Deutsch, the
24 general counsel, and he's also on the ExCo
25 leadership team, executive committee

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2 leadership team.

3 (Stenographer clarification.)

4 Q. Since you've been employed at
5 Celsius, were there or have there been other
6 attorneys employed by Celsius?

7 A. Yeah. There's a legal team, yeah.

8 Q. But the folks that I just
9 mentioned, would you consider them the
10 leadership?

11 A. Yeah. I mean, you have the two
12 heads of the group, and I think Joseph and
13 Yarden are, kind of -- I don't know that
14 they're officially called "deputies," but they
15 are definitely the more senior folks within
16 the team.

17 Q. And all four of them still work at
18 Celsius?

19 A. Yes. In the update I gave to the
20 Court, I believe there was six on the legal
21 team currently and three on the reg team
22 currently, off of memory.

23 Q. And if you know, are you familiar
24 with who would have hired any of those
25 individuals? My understanding is they may

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2 have all started before your tenure.

3 A. Yeah, yeah.

4 Q. Okay.

5 A. I mean, it was a small company
6 then so, you know, I would think that most --
7 the leadership team would have been involved
8 in hiring them, but I'm only guessing.

9 Q. Okay. Are you familiar with the
10 budget that was filed at ECF Docket 1111 on
11 October 17, 2022?

12 A. The cash flow budget?

13 Q. Yup.

14 A. Not the specific one but, yes,
15 with the processing and the -- yeah.

16 Q. I'm not going to ask specific
17 questions, but I just wanted to know if you
18 were generally familiar with --

19 A. I approve each one of those that
20 gets filed.

21 Q. To your knowledge, has there been
22 an updated 13-week forecast?

23 A. Yes. We update it -- we update it
24 regularly.

25 Q. When do you anticipate that an

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2 updated would be filed with the Court?

3 A. We're probably getting to -- it's
4 either this week or next. It's usually --
5 it's usually towards the middle of the month
6 when we file a new report, so...

7 Q. So you expect it probably to be
8 filed with your monthly operating reports or
9 about that?

10 A. Yeah, very soon.

11 Q. So obviously it hasn't been filed
12 yet, but perhaps you've reviewed some of the
13 first drafts.

14 Are there any stark differences
15 between the 13-week forecast that you are
16 aware of?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. I'm just -- I'm just thinking.

21 Q. Yeah.

22 A. Because we do regular versions and
23 we walk them, effectively, explain the
24 variances. I'm just trying to think
25 through -- I don't know of anything that was

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2 significant. I mean, there's always a handful
3 of millions that, kind of, in the launch point
4 that impacts our forecast. And then we
5 obviously have a lot of people looking at,
6 kind of, expected inflows and outflows.

7 Q. Sure.

8 A. But I don't know of anything
9 meaningful that's changed.

10 Q. Okay. At the last hearing last
11 week, do you remember a discussion about
12 whether or not Celsius was currently cash flow
13 positive?

14 A. Yeah, in the mining company,
15 operational cash flow positive.

16 Q. As of today's date, is that still
17 accurate?

18 A. Operationally cash flow positive,
19 yes. Because we curtail and it's neg- -- so
20 we have only six people in mining.

21 Q. Okay.

22 A. And if the energy cost is more
23 expensive than what we can produce in new
24 Bitcoin, we just shut off the machines.

25 So, you know, our operational cash

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2 flows are positive. There is some remaining
3 CapEx as we build out the midland proprietary
4 sites and some power deposits, and things like
5 that.

6 Q. Have you or anyone at Celsius that
7 you're aware of, or Alvarez & Marsal who is
8 the financial advisors for the debtors,
9 prepared a liquidation analysis to date for
10 Celsius?

11 A. We did a very high-level
12 liquidation analysis, and we shared it with
13 the committee.

14 Q. As of today's date -- and
15 obviously you don't have the numbers in front
16 of you -- can you estimate offhand how much
17 general cryptocurrency Celsius has as of
18 today's date?

19 A. Versus the obligations?

20 Q. Yes.

21 A. I'm working off of memory. It's
22 probably around 50 cents on the dollar
23 liquidation value.

24 Q. What about cash on hand?

25 A. Cash on hand is in the 150-60

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2 million range. Cash has been pretty steady.

3 I think it's right around 170. We topped up

4 around 190 and we've drawn down a little bit,

5 but it's hanging in there. Now the

6 professional fees are starting to come.

7 Q. Yeah. A little bit earlier, we

8 touched just -- we touched a little bit on a

9 potential debtor in possession or DIP

10 financing. Just for the record, are you still

11 planning to procure DIP financing as of

12 today's date?

13 A. It's, kind of, the option of last

14 resort.

15 Q. Sure.

16 A. So we're not -- we're hoping that

17 we don't have to do DIP financing.

18 Q. Have the debtors met with any

19 potential financier -- financiers or --

20 A. Centerview ran a process early on

21 in the case.

22 Q. Okay.

23 A. And we -- I did see some of the,

24 kind of, proposals, and they were very

25 expensive.

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2 Q. Based on your understanding of the
3 ledgers and liquidation analysis at Celsius,
4 would the sale of stablecoin affect any future
5 positioning if you were to seek a debtor in
6 possession finance loan later on down the
7 line?

8 MR. McCARRICK: Object to
9 form.

10 You can answer.

11 A. Not that I know of.

12 Q. Are you familiar with the de
13 minimis asset motion, an order that was
14 previously requested and granted in this case?

15 A. Yes, I am.

16 MR. McCARRICK: Objection to
17 form.

18 THE WITNESS: Oh, sorry.

19 MR. McCARRICK: You can
20 answer. It's fine.

21 Q. In it, the debtors sought to sell
22 certain share stocks and other de minimis
23 assets.

24 To your knowledge, has there been
25 any flow of cash or liquidity from those

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2 sales?

3 A. Unfortunately, no. The items in
4 which we hold are marketed, not actively
5 marketed, but there is very little interest.
6 We hold notes on mining companies in the
7 marketplace. Mining companies are crushed.

8 We also hold some stock
9 certificates in a few companies. Typically
10 the flow of daily volume is pretty light in
11 those, and we would move the markets, although
12 we did get nonobjections to sell one. It was
13 under a million dollars. But in general,
14 these are very illiquid and not much in
15 demand.

16 Q. Are you familiar with the status
17 of the sale of the GK8 entity?

18 A. Generally familiar, yes.

19 Q. Would the sale of the GK8 entity
20 or the interest in it affect the liquidity
21 position of Celsius?

22 A. If we were to sell it, it would be
23 a help, yeah. We would have positive net cash
24 proceeds.

25 Q. Do you have an estimate for --

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2 earlier we -- you discussed that you might be
3 able to extend through March without any
4 additional infusion of cash, and with the sale
5 of stablecoin, potentially April. If the GK8
6 entity was sold, do you have an estimation
7 for --

8 A. I -- I estimate that would get us
9 through the second quarter.

10 Q. Through the second quarter.

11 A. So with the stablecoin sale and
12 the GK8 sale, I think that would give us ample
13 liquidity, albeit it would be tight, to
14 probably fund this case.

15 Q. And I know you -- this was asked
16 earlier, but I just want to confirm. How much
17 stablecoin are you currently seeking to sell?

18 MR. McCARRICK: Object to
19 form.

20 A. 18 million.

21 Q. I think the previous request may
22 have been for 23 million. Could you just
23 explain the change from 23 to 18 million for
24 the record?

25 A. Yeah. We wanted to be sure

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2 that -- make sure that we didn't sell anything
3 that had to do with custody or withheld,
4 because those are key outstanding legal items,
5 as well as the loan program.

6 So I think when we looked at the
7 total stablecoin in all the wallets, all the
8 assets that we have, and then we effectively
9 subtract at a coin level, custody, withheld in
10 the lending programs, you get to 18.

11 Q. Are there any costs associated
12 with the sale of stablecoins?

13 A. Very little. Near zero.

14 Q. Just for clarification, where or
15 what wallets are the stablecoins that you're
16 seeking to sell located in?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. I believe these are in the main
21 Fireblock accounts.

22 Q. Is it correct that on that main
23 Fireblock account that the coins may be
24 sitting in are commingled accounts?

25 MR. McCARRICK: Object to

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2 form.

3 You can answer.

4 A. Yeah, it's an omnibus structure.

5 So multiple -- multiple coins are in there,

6 right? We have customer obligations. And

7 then we, on our asset side of the balance

8 sheet, we put them into Fireblocks workspaces

9 for deployment.

10 Right now, obviously, we're

11 preserving the estate, so everything is locked

12 down in the Fireblocks workspaces.

13 Q. Are the coins you're seeking to

14 sell held by a debtor, or are any coins held

15 by a nondebtor entity?

16 MR. McCARRICK: Object --

17 object to form.

18 You can answer.

19 A. All are held by the debtor.

20 Q. Do any nondebtor entities hold

21 stablecoins?

22 A. Not that I'm aware of. There

23 could be a few small amount in, like, the

24 Lithuanian entity, but not that I know of.

25 Q. Would those be in the same

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2 account, the same commingled Fireblocks
3 account, or would they be held separately?

4 A. They would be held with other
5 coins in the main account. Coins are pooled
6 to coin types, and then they're held within a
7 certain workspace. So you would have multiple
8 coins in that workspace.

9 Q. Are the debtors paying any
10 expenses for any nondebtors?

11 MR. McCARRICK: Object to
12 form.

13 You can answer.

14 A. Within the limits granted by the
15 Court. So there's the Israeli entity,
16 including the GK8 entity, and the Serbian
17 entity that are nondebtors. They were funded
18 in the normal course. And then I believe
19 we've also pushed down regular funding to the
20 Israeli and GK8 entity since the case started.

21 Q. Do any nondebtors have any assets
22 that could be used to fund their own
23 operations?

24 A. I can't remember specifically
25 where the GK8 asset sits.

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2 Q. I think it's a -- I think it's a
3 nondebtor entity.

4 A. Yeah. So -- but I believe that's
5 a nondebtor entity owes the debtors. There's
6 a loan extended. But, yeah, my understanding
7 is other than GK8 and certain IP in the
8 Israeli entity, there's not much to sell.

9 Q. So turning a little bit to your
10 declaration, is it fair to say that the
11 debtors have been primarily relying on
12 proceeds generated from the debtors' Bitcoin
13 mining activities in order to fund these cases
14 and its operating expenses?

15 A. I would say that in general, the
16 mining activities fund mining.

17 Q. Solely mining?

18 A. Yeah. Those -- the production of
19 mined -- of new mined coins is for the sole
20 benefit of the mining company. What the other
21 debtor entities have is loan collection.
22 There was significant loans that we called,
23 including Bitfinex maturities, as well as well
24 as the funding that we had as of the petition
25 date.

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2 Q. Is it fair to say that Bitcoin
3 mining is, as of today's date, a primary
4 operation of the debtor?

5 A. No. There's -- I mean, we have
6 167-ish employees, this is as of last week,
7 and the mining organization makes up a total
8 of six. So you can imagine that the folks in
9 legal, the folks in finance were doing cash
10 flow budgets for mining in what we would call
11 "network." So there's a lot of activity in
12 the nonmining debtors.

13 Q. Are you familiar with when the
14 mining activities and mining operations began
15 at Celsius?

16 MR. McCARRICK: Object to
17 form.

18 You can answer if you know.

19 A. My understanding is that it
20 started at scale in 2021.

21 Q. Are you familiar with the
22 purchasing of the mining rigs since you were
23 an employee at Celsius?

24 A. Most of those purchases predate my
25 employment.

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2 Q. Okay.

3 A. But I'm familiar with the process.
4 Most of them were Bitmain, machines that were
5 purchased, some of which are still waiting to
6 be shipped. A lot of them are already in our
7 center or in third-party hosting.

8 Q. At the last hearing, I think there
9 were some comments made that mining is cash
10 flow positive right now. Are you familiar
11 with the more specifics about the mining
12 operation?

13 MR. McCARRICK: Object to
14 form.

15 You can answer.

16 A. Yeah, I manage -- I mean, I
17 supervise the mining business. So I'm
18 familiar with the strategy and the result.

19 Q. Do you know -- strike that.

20 Can you provide an estimate of how
21 many Bitcoin are currently mined per day by
22 Celsius?

23 A. It ranges between 15 and 18
24 Bitcoin per day.

25 Q. Can you provide an estimate of

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2 ongoing mining expenses? I know you don't
3 have the figures in front of you.

4 A. I don't have my calculator either.
5 We have about a 20 percent margin.

6 Q. Okay.

7 A. So our expenses make up about
8 80 percent of that Bitcoin that's mined. So
9 if you were to take the, let's say, 16
10 Bitcoin, multiply it by 30 times the price,
11 you know, and then take times 80 percent, that
12 would give you, effectively, the cost base.

13 The vast majority of the costs of
14 mining are to pay for hosting charges, which
15 are predominantly electricity.

16 Q. Now that we're going into the
17 cooler months, is it your anticipation that
18 possibly those expenses will increase or
19 decrease?

20 MR. McCARRICK: Object to
21 form.

22 You can answer.

23 A. Yeah. I mean, I'm not an energy
24 guy. I was more of a rates guy --

25 Q. Okay.

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2 A. -- in my -- in my background, but
3 energy and rates are both traded instruments
4 that depend on market sentiment. I think the
5 Federal Reserve, with removing accommodation
6 and increasing the funds rate, is slowing
7 demand. But we have the wildcard of the
8 unfortunate war.

9 So it's hard to, kind of, make a
10 bet on one way or the other. Traditionally I
11 like to be neutral on these things.

12 My understanding is there's
13 probably more downward pressure than upward
14 pressure, just given where we are in the
15 cycle. So hopefully things ease a little bit
16 due to demand going down, as well as the hot
17 months or, you know, the air conditioning
18 months in the peak summer.

19 Q. Are you familiar with how ongoing
20 mining expenses are funded?

21 A. Largely with the production of
22 Bitcoin and the cash they have on hand.

23 Q. What about the build-out in -- was
24 it west Texas? Was that where you --

25 A. Yeah, west Texas. Midland, Texas,

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2 yeah.

3 Q. Are you familiar with how that
4 buildout is being funded?

5 A. Yeah. That's funded with both the
6 cash on hand -- there was a -- there was a
7 loan that came down to mining at the petition
8 date that gave them cash, as well as the mined
9 Bitcoin is what's used to fund the mining
10 operations, including the CapEx.

11 Q. The loan for the buildout, do
12 you -- are you familiar with whether or not
13 Celsius is currently making payments on that
14 loan?

15 MR. McCARRICK: Object to
16 form. Outside the scope.

17 You can answer.

18 A. I'm not familiar with that. I
19 don't believe they are.

20 Q. Are you familiar with the critical
21 vendor payments in this case?

22 A. More familiar in the beginning
23 than I am now, but yes.

24 Q. Is it your understanding that the
25 debtors are making ongoing payments on behalf

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2 of or for GK8?

3 MR. McCARRICK: Object to

4 form.

5 You can answer.

6 A. I know -- I know that GK8 has
7 funding. The debtors have provided funding to
8 GK8. And GK8 also has revenue coming in. I
9 believe the net of the two is around \$500,000
10 per month that they effectively need for
11 funding.

12 But GK8 has been ran and continues
13 to be ran semi-independently, so we don't have
14 too much involved in the operations. My
15 understanding is they're trying to get new
16 clients, they're building the technology, and
17 they're paying their engineers.

18 Q. Has there been any discussion of
19 moving the assets of Celsius from Fireblocks
20 to GK8?

21 MR. McCARRICK: Object to --

22 A. We did --

23 MR. McCARRICK: Object to

24 form.

25 You can answer.

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2 A. We did have discussions early on
3 about moving significant amount of coins to
4 Fireblocks, and we decided not to do that for
5 a few reasons: One, the sale process. We
6 didn't want to move assets then to have to
7 potentially bring them back.

8 And, two, GK8 is a cold storage,
9 physical security type of play, and the
10 thought of having billions of dollars in a GK8
11 suitcase with armed guards around it doesn't
12 seem to be the best idea.

13 Q. Okay. Is it your understanding
14 that the debtors are making ongoing payments
15 on or behalf of for Celsius mining?

16 MR. McCARRICK: Object to
17 form.

18 You can answer.

19 A. Mining is funding their own with
20 the cash that they have on hand as well as the
21 mined Bitcoin.

22 Q. Okay. Are there any employees
23 exclusively working on mining operations that
24 are not being funded exclusively by mining
25 revenues?

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2 MR. McCARRICK: Object to

3 form. Outside the scope.

4 You can answer.

5 A. Not that I know of.

6 Q. Are you familiar with the
7 preferred equity holders and the allegations
8 that they're making regarding GK8?

9 MR. McCARRICK: Object to
10 form. Outside the scope.

11 You can answer.

12 A. Not in detail, but I've had --
13 I've had discussions around it. Yeah.

14 Q. All right. If successful, based
15 on your knowledge, would it be fair to say
16 that it is possible that certain value from
17 either GK8 or mining might inure to those
18 preferred shareholders and not to the debtors'
19 bankruptcy estate?

20 A. I understand that's a risk, and I
21 believe this is a key legal question for the
22 judge to rule upon.

23 Q. To the best of your knowledge, if
24 successful -- and when I say "if successful,"
25 I mean if the preferred shareholders are

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2 successful in obtaining that value -- what
3 does the debtor intend to do, if anything, to
4 recoup any of those ongoing expenses that are
5 paid for by the estate, and specifically with
6 respect to this motion and the sale of
7 stablecoins that have benefited a different
8 constituency?

9 MR. McCARRICK: Object to
10 form.

11 You can answer.

12 A. We track the outstanding loans
13 that we've given to GK8. So every time we
14 push down funding, there's a related, you
15 know, entry to record. If the Series B were
16 to get assets, that would come at a great,
17 great cost to the estate and to the creditors.

18 We understand the cash that has
19 moved from debtor to nondebtor. We track it
20 and we can size it.

21 Q. So to confirm, will the stablecoin
22 sale be used to fund the mining operations?

23 MR. McCARRICK: Object to
24 form.

25 You can answer.

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2 A. The mining company has cash flows
3 through January. A lot of that depends on the
4 price of Bitcoin at these levels. Right?
5 It's difficult.

6 The mining company could take out
7 a loan, and it's possible that we would
8 provide funding to them. It's also possible
9 that the mining company would sell mining
10 rigs.

11 So, you know, I think mining is
12 something that we're working on. It's tough
13 to sell rigs in the middle of a sale process.
14 But, you know, that's a possibility. We do
15 have people that are interested in buying
16 thousands of our rigs. So ...

17 Q. So the instant sale of stablecoin,
18 the \$18 million worth, will any of that sale
19 or funding be used to fund the mining
20 operations?

21 MR. McCARRICK: Objection to
22 form.

23 Q. As of -- as of today's date?

24 A. No. No, the money will sit in
25 network. It will not go to mining. Like I

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2 said, mining in January does have a cash flow
3 issue. You know, they'll need to --
4 they'll -- we'll need to figure out a way to
5 fund that. It could be selling rigs. It
6 could be an additional loan. I don't know.

7 I think it depends -- and we'll be
8 close with -- we'll work with the committee on
9 determining what's the best -- what's the best
10 execution for the estate.

11 Q. To that end, are you aware of the
12 debtors marketing or selling the mining
13 company separately?

14 A. Yeah, that process has kicked off.

15 Q. As of today's date, in your
16 knowledge, will the stablecoin sale that
17 you're seeking be used to fund the continued
18 mining buildout in west Texas?

19 A. No, mining has enough on hand to
20 fund the buildout. That's --

21 Q. To the completion?

22 A. To its completion. But in
23 January, late January, they'll need money for
24 operational expenses.

25 Q. If the buildout is not completed,

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2 or if the buildout is -- if the buildout is in
3 some way paused, what impact would that have
4 on the liquidity of Celsius?

5 A. Well, we're at the tail end of the
6 buildout, so probably the biggest expense has
7 to do with the sales and use taxes when we
8 deploy the rigs.

9 So if we were to not -- if we were
10 to slow down production and not deploy the
11 rigs, that would save on sales and use taxes,
12 but we would forego the 20 to 30 percent
13 margin that we have in Midland, Texas.

14 So assuming that we're going to
15 deploy those rigs, you're going to pay the
16 sales and use tax, we should start producing
17 Bitcoin at a positive margin as early as we
18 can. That's the strategy.

19 Now, the actual buildout and the
20 electrification, kind of, does go into the
21 first quarter, early first quarter, but that
22 should all be basically done in earnest by
23 January.

24 Q. As of today's date and your
25 knowledge, will the sale of the current

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2 stablecoin be used to fund GK8?

3 A. Not directly. GK8, like I said,
4 has a little bit of a cash burn, about a half
5 a million per month. If the sale goes
6 through, obviously the proceeds will come back
7 to the estate. If it continues, there could
8 be subsequent funding that might be needed to
9 preserve the value in GK8.

10 But there's nothing on the table
11 expecting that. We're expecting the sales
12 process to be successful. But if it's not for
13 whatever reason, GK8 may need more funding
14 next year.

15 Q. Are any assets of GK8 -- and when
16 I say "assets," I'm specifically talking about
17 either stablecoin or other forms of
18 cryptocurrency -- held in that commingled
19 Fireblocks account we were discussing earlier?

20 MR. McCARRICK: Object to
21 form.

22 You can answer.

23 A. Are any of the assets of GK8? Not
24 that I know of, no. We hold about
25 \$1.5 million worth of cryptocurrency in GK8,

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2 but I don't know of GK8 holding anything with
3 Celsius.

4 Q. Are you familiar with the Prime
5 Trust settlement?

6 A. Not very --

7 MR. McCARRICK: Object to
8 form. Outside the scope.

9 You can answer.

10 A. Not very familiar.

11 Q. To the best of your knowledge,
12 does the Prime Trust settlement adjust when
13 liquidity will change for Celsius?

14 MR. McCARRICK: Object to
15 form.

16 You can answer.

17 A. I don't know the specific coins in
18 Prime Trust. We have -- we include them in
19 our positions. So, of course, if the
20 settlement with Prime Trust brings the coins
21 back, I'm assuming the vast majority of them
22 are Bitcoin and ETH, so they won't change the
23 liquidity.

24 Q. It's based on my understanding of
25 the Prime Trust settlement that it's an

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2 estimated somewhere around \$15 million, and
3 you're seeking to sell about \$18 million worth
4 of stablecoin. If you were to receive that
5 \$15 million from the Prime Trust, would that
6 reduce or eliminate your need to immediately
7 sell the stablecoin?

8 A. No, but my under- -- I don't think
9 so. My understanding is the Prime Trust
10 settlement will return coins, not fiat.

11 Q. Okay.

12 A. So there could be other coins that
13 we're not asking to sell that's part of that
14 settlement.

15 Q. So it won't immediately impact
16 your liquidity position?

17 A. Not -- to my understanding, it
18 will not.

19 Q. And if you know, and I understand
20 you're not intimately familiar with the Prime
21 Trust settlement, the proceeds from the Prime
22 Trust settlement, will those be put in the
23 same commingled Fireblocks account?

24 MR. McCARRICK: Object to
25 form. Outside the scope.

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2 You can answer.

3 A. I would think that we would put
4 all the keys under lock and key the way the
5 security stip requires. So we'll follow the
6 Court's rules, which likely means bringing it
7 back to Fireblocks in a locked network space.

8 Q. I only have a few more questions.

9 A. Okay.

10 Q. Throughout the case, there's been
11 some discussion about in-kind distribution.

12 As of today's date, is that
13 something that you're still contemplating?

14 A. We hope to distribute back to our
15 customers in kind. They clearly want in-kind
16 distribution. So we're fighting for that,
17 yes.

18 Q. Does the sale of stablecoin in any
19 way impact an in-kind distribution?

20 A. No, because stablecoins are
21 effectively one-for-one with dollars. So if
22 you were to say, Let's sell Bitcoin, that, I
23 think, people could argue the price might go
24 up, so you're impacting the estate, where
25 stablecoins is a dollar-for-dollar. I don't

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2 see it as impacting returning in kind.

3 Q. What if the customer either loaned
4 or has on deposit with Celsius stablecoins?

5 MR. McCARRICK: Object to
6 form.

7 You can answer.

8 A. My understanding of the bankruptcy
9 code is that they have a IOU to Celsius, not
10 the coin specifically. So we owe them
11 consideration of that, and we hope to return
12 it in kind. But I don't know that, if you had
13 a stablecoin, you're going to get a stablecoin
14 back. You might get back BTC and ETH.

15 Q. Just one second.

16 Is it your understanding or do you
17 have any knowledge about what has been, I
18 guess, referred to as the custody shortfall?

19 MR. McCARRICK: Object to
20 form. Outside the scope.

21 You can answer.

22 A. Yes, I do have a general
23 understanding of that, yeah.

24 Q. It's -- and is it fair to say that
25 there's a custody shortfall of about

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2 \$16 million?

3 A. That's my understanding, yes.

4 Q. Does the sale of stablecoin at
5 this time impact those custody accounts or a
6 return of those custody assets?

7 A. No. Not at all because we're
8 not -- we're not asking for relief to sell any
9 of the stablecoin related to custody. So we
10 will not be increasing the shortfall.

11 Q. To the best of your knowledge, how
12 do you plan to make up for that shortfall?

13 MR. McCARRICK: Object to
14 form. Outside the scope.

15 You can answer.

16 A. So most of the coins we can source
17 from our main Fireblocks. We just need to
18 move them over to the custody workspace.

19 I think there is -- if you assume
20 all custody and all withheld get paid out,
21 there might be a few million dollars of coins
22 that we have to source. But, in general, we
23 have the coins.

24 Q. A little earlier there was some
25 discussions about whether coins may be

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2 actually moved or if they're just redesignated
3 on the ledger.

4 Just for clarification, and maybe
5 this is -- maybe I should know this, do they
6 pass through a main or aggregator wallet at
7 that point, or how does -- what's your
8 understanding of how those coins move?

9 MR. McCARRICK: Object to
10 form. Outside the scope.

11 You can answer.

12 A. Yeah, and I think it's consistent
13 with the examiner report that things move into
14 the main wallet omnibus structure.

15 Q. Okay. Also, earlier in your
16 testimony, there was just a little discussion
17 about marketing.

18 A. Yeah.

19 Q. So I just wanted to ask a few
20 follow-up questions.

21 So earlier in your testimony, you
22 stated that the marketing program had been
23 shut down by the time you were CFO. Is that
24 correct?

25 MR. McCARRICK: Object to

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2 form. Outside the scope.

3 You can answer.

4 A. Yeah. We stopped soliciting new
5 customers and new funds when I became CFO.
6 Effectively, all new customer activities is
7 not ongoing. So we're not actively marketing.
8 We do not have a marketing team. That does
9 not mean that customers can still, via the
10 blockchain, send coins to our wallets. We
11 can't stop that from happening.

12 Q. Do you know when that marketing --
13 when those marketing efforts would have
14 ceased --

15 MR. McCARRICK: Object to
16 form. Outside --

17 Q. -- approximately?

18 MR. McCARRICK: Oh, I'm sorry.

19 A. I think right around the pause.
20 Now, we were looking in May at reducing
21 marketing expense as part of our program to,
22 kind of, restructure the company, but we ran
23 out of time with the pause, so ...

24 Q. Who was previously in charge of
25 marketing at Celsius?

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2 MR. McCARRICK: Object to

3 form. Outside the scope.

4 You can answer.

5 A. I'm very bad with names, so I'm
6 only going to be able to say the first name.
7 Or I'll say, I believe there was Tushar who
8 ran product and marketing. But -- and I
9 wasn't in these discussions. I saw it
10 firsthand, seldomly, and also heard about it.

11 Alex Mashinsky also had a heavy
12 hand in marketing. Alex ran marketing before
13 Tushar, and then around the petition date,
14 Tushar was let go of and Alex started thinking
15 about the communication side as well.

16 I think even right before the
17 pause, I believe Alex may have taken marketing
18 back. I could be wrong but I believe he may
19 have.

20 Q. Okay. At any point during your
21 time at Celsius, did Celsius engage with an
22 outside marketing or public relations or
23 advertising firm?

24 MR. McCARRICK: Objection to
25 form. Outside the scope.

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2 You can answer.

3 A. We're engaged with C Street on
4 communications right now. I know we did paid
5 marketing through, like, Google and Facebook.
6 I don't know if there was agencies, but I
7 would venture to guess there was some. But I
8 don't think that was a significant amount of
9 spend.

10 Q. It's possible that they may have
11 had some kind of contractual relationship with
12 a traditional marketing or advertising firm
13 that may have assisted Celsius in its
14 outreach?

15 MR. McCARRICK: Objection.

16 Calls for speculation.

17 You can answer.

18 A. I would assume but do not know for
19 sure.

20 Q. And during your tenure, you're
21 unaware of that?

22 A. Other than C Street handling
23 communications internal and external, I'm not
24 aware of marketing.

25 Now, I know through going through

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2 the budget process, there was significant
3 amounts that were, kind of, earmarked for,
4 like, Google leads, Facebook leads, and stuff
5 like that. But that's really, to my
6 knowledge -- I never went line by line by
7 agencies.

8 Q. And just for clarification, those
9 type of efforts are not analytical, they're
10 just actual advertisements?

11 MR. McCARRICK: Object to
12 form. Outside the scope.

13 You can answer.

14 Q. If you know?

15 A. It's always hard to determine the
16 actual capture rate when you're doing, kind
17 of, brand impression. But you can't measure
18 it. I don't know how well it was measured
19 here.

20 I know at JPMorgan Chase, we spent
21 a lot of time and effort tracking the success
22 of our marketing programs. I just haven't
23 been able to do the forensics to understand
24 what was done in the past. I haven't had time
25 for that.

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2 Q. And so I just have, like, one --
3 one more question. And maybe it's the coup de
4 grace question. What -- in your
5 understanding, what exactly is the sale of
6 stablecoin going to fund?

7 A. Oh, operations, payroll,
8 professionals, all the people around this
9 table, the US Trustee's office. So we
10 actually -- yeah, it's true. We have normal,
11 kind of, payroll, vendor costs, and
12 professional fees related to the case. We
13 have some money coming in, but we do have a
14 burn rate. So the burn rate will fund core
15 operations.

16 MS. CORNELL: I think that's
17 all that I have.

18 MR. McCARRICK: Thank you.

19 MS. CORNELL: Thank you.

20 MR. McCARRICK: Yeah, let's
21 take a five-minute.

22 THE VIDEOGRAPHER: The time
23 now is 12:06 p.m. This concludes
24 Media 3. Off the record.

25 (Recess taken from 12:06 p.m.)

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2 to 12:18 p.m.)

3 THE VIDEOGRAPHER: The time
4 now is 12:18 p.m. This begins Media
5 4. On the record.

6 EXAMINATION BY

7 MS. MILLIGAN:

8 Q. Hello, my name Layla Milligan.
9 It's L-a-y-l-a, Milligan, M-i-l-l-i-g-a-n.
10 I'm with the Texas Attorney General's office.
11 We represent the Texas State Securities Board
12 and the Texas Department of Banking.
13 I'm going to have just a few
14 questions for you, Mr. Ferraro, just to follow
15 up and maybe a couple of clarifying questions.
16 If you -- again, if you don't understand my
17 question or it's unclear, I'm 100 percent sure
18 it's my fault, so please just let me know, and
19 I'll do my best to rephrase.

20 A. Okay.

21 Q. When you took your job, which I
22 understand was in March of 2022, with Celsius,
23 what did you review or research to get an
24 understanding of the operations of Celsius
25 itself?

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2 A. Before or after I started?

3 Q. At any time.

4 A. Okay.

5 Q. Either before or after you
6 started, what did you do to understand --

7 A. Yeah.

8 Q. -- how Celsius itself works, not
9 necessarily cryptocurrency in general?

10 A. Yeah, so I had a -- I'd started
11 talking with folks at the company probably in
12 January. So I had a couple months of
13 discussions with a handful of individuals, but
14 nothing really specific about the operations.

15 I would say I hit the ground
16 running March 21, working on the first budget
17 for Celsius. So, you know, you already, as a
18 guy who did this for a living, you're already
19 really late in May, April-May to deliver a
20 budget to the board. It was -- there was a
21 board meeting on May 2.

22 So I, kind of, dove head first
23 into understanding, kind of, the financial
24 architecture of the company and, kind of, how
25 they made money, where they lost money,

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2 et cetera.

3 Q. Okay. And since your role at the
4 company has changed over time, have you done
5 additional research or tried to learn how the
6 operational functions worked at Celsius --

7 A. I mean, since --

8 Q. -- as --

9 A. -- since my role changed, we went
10 into petition. So the operational aspects
11 that Celsius did prepetition and prepausa to
12 when I became CFO or CEO are very different.

13 So my efforts are today and in the
14 future, not looking in the past, because I'm
15 trying to maximize value for the estate and
16 for all of stakeholders.

17 Q. You -- just to follow up on some
18 questions that you testified about before, one
19 of the issues is that you've been asked, I
20 think, by the committee and by the US Trustee
21 is regarding the ability to trace stablecoin
22 when it was added to the platform.

23 And I just want to make sure,
24 because I don't want to repeat the question,
25 that my understanding from your testimony was

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2 that they do not trace stablecoin. But I
3 thought I heard you say that they can, it
4 would just take a huge amount of effort.

5 Is that an accurate statement? I
6 don't want to misstate what you said --

7 A. Yeah, I mean --

8 Q. -- I just want to clarify.

9 A. Yeah, we have an omnibus account
10 structure, meaning when customers lend us
11 their coins and we take title to it, we don't
12 trace it back to the customer because it's
13 Celsius' property at that point in time. It's
14 pooled with other like cryptocurrencies
15 typically on Fireblocks. Now --

16 Q. And I understand -- I'm sorry to
17 interrupt.

18 A. I was just going to say that my
19 understanding of the blockchain is that
20 there's lots of data and every transaction is
21 recorded.

22 But in the ledger, what it would
23 say is we owe X, we have X obligation to this
24 person or this individual or this entity.

25 Q. Okay. And you said Mr. Blonstein

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2 would be the person who would be able to --

3 A. I think, yeah --

4 Q. -- accurately testify?

5 A. As the head of product -- as the
6 head of product, and he's also been with the
7 company longer than I have, he would probably
8 be a great resource for you guys to -- for
9 that question.

10 Q. Thank you.

11 You testified about the terms of
12 use generally including a transfer of
13 ownership or lending provisions. That -- did
14 you testify that it was all that you're
15 interested in, was all terms being used
16 included that type of agreement, or just the
17 more recent terms of use? And I'm only asking
18 to -- as to your knowledge?

19 A. Yeah, my knowledge is really --
20 I've gone through the previous terms of use.
21 My understanding is that in all of them,
22 Celsius had the right to rehypothecate,
23 pledge, et cetera. In Terms of Use 6, I think
24 that there was a double-click that needed to
25 happen, both to accept the terms and to click

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2 "accept." And those were, you know, very
3 robust in explaining title, transfer,
4 et cetera.

5 But I believe that that provision
6 of ownership and transfer of ownership was
7 throughout all the terms of use.

8 Q. So I -- in reviewing, I -- I will
9 say I'm certainly not debating you about this,
10 but as far as -- let me, sort of, clarify my
11 question.

12 When a person was signed up with
13 Celsius and they would initially agree to the
14 terms of use, say, someone who joined in June
15 of 2018, did Celsius maintain which terms of
16 use they initially had signed up for? So say
17 Bob Smith signed up for an account on
18 January of '18, does Celsius maintain
19 information and records as far as the initial
20 date --

21 A. Well, because --

22 Q. -- and the terms of use that was
23 agreed to?

24 A. Because you --

25 MR. McCARRICK: Object to

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2 form.

3 You can answer.

4 THE WITNESS: Okay. Sorry

5 about that.

6 A. We know when the customer came,
7 you know, when the customer opened the
8 account. I don't -- and we know that in order
9 to have opened an account, you have to accept
10 the terms of use. So I think, one, it would
11 be very reasonable just to go back to the
12 timing of when the account was opened.

13 Q. Okay. And Celsius maintains that
14 information, the --

15 A. The timing of -- my understanding
16 is yes.

17 Q. Okay. Do you know how they
18 maintain that information? Like, is it in a
19 spreadsheet? Is it in a system somewhere?

20 A. It's -- it would be in the back
21 office system -- right? -- where you track the
22 obligations, the customer information,
23 et cetera. I haven't -- I haven't seen the
24 screens. I think Oren would also be a great
25 place to ask the detailed questions on that.

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2 Q. Okay. And just to clarify,
3 Celsius still has that information, it's
4 just --

5 A. Oh, yeah, we protect all the
6 data --

7 CERTIFIED STENOGRAPHER: I'm
8 sorry, you have to let her ask the
9 question.

10 Can you start the question
11 over again, please.

12 MS. MILLIGAN: Yes. Sorry.

13 Q. So -- and just to clarify, Celsius
14 still maintains that information somewhere in
15 its system currently?

16 A. All data is preserved and
17 protected, yes.

18 Q. Okay. The terms of use did change
19 after you joined Celsius. Understanding that
20 you joined in a different capacity, did you
21 have any involvement in that process, the
22 change of terms of use, after you joined the
23 company?

24 A. No.

25 Q. Okay. Regarding the omnibus or

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2 main account, I'm going to, kind of, refer to
3 "omnibus" because that's the word you've been
4 using during your testimony.

5 To your knowledge, were customers
6 informed that their coins were going to be
7 placed in an omnibus or main account and not
8 held in individual wallets?

9 MR. McCARRICK: Object to
10 form. Outside the scope.

11 You can answer.

12 A. To my knowledge, in the terms of
13 use, it's stated clearly that the customers
14 were transferring ownership to Celsius, and it
15 didn't go into exactly -- there was a risk
16 disclosure, but it didn't go into how the
17 account structures worked, at least off of
18 memory. It wouldn't --

19 Q. Right. So there wasn't specific
20 information provided as --

21 A. I don't know why --

22 CERTIFIED STENOGRAPHER: You
23 have -- I'm sorry, repeat your
24 question again.

25 Q. To your knowledge, there was not

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2 specific information provided to customers
3 that they -- their funds were going into an
4 overall main wallet versus individual wallets?

5 MR. McCARRICK: Object to
6 form. Outside the scope.

7 You can answer.

8 A. I don't know why we wouldn't
9 disclose that. I don't know. I don't
10 remember reading it. And I don't know the
11 purpose of it.

12 Q. But to your knowledge, the answer
13 is, no, they weren't informed of that?

14 MR. McCARRICK: Object to
15 form. Outside the scope.

16 You can answer.

17 A. I don't remember.

18 Q. Okay.

19 A. I don't remember reading it
20 through. So I don't want to confirm one way
21 or another.

22 Q. Okay. All right. I certainly
23 don't want to put words in your mouth. So if
24 you don't know, that's fine.

25 To your knowledge, did Celsius

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2 ever use funds from these omnibus or main
3 wallets to pay interest or rewards to earn
4 program participants?

5 MR. McCARRICK: Object to
6 form.

7 You can answer.

8 A. It's fungible. So coins in the
9 main account, property of Celsius, were used
10 to fund operations, to pledge and borrow, or
11 to pay rewards along with the other funds from
12 capital contributions, et cetera, that are in
13 the main account and in the fiat accounts.

14 Q. Were stablecoins used to pay
15 interest or rewards to earn program
16 participants?

17 A. In kind, stablecoin rewards, yes.

18 Q. To your knowledge -- okay. So I
19 guess, the frictional wallets, as described,
20 would be the same as the main or omnibus
21 wallets. Is that right?

22 MR. McCARRICK: Object to
23 form.

24 You can answer.

25 A. My understanding is the frictional

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2 wallets are wallets to process withdrawals and
3 are not the main. Because that way, if
4 anything happened to the frictional wallet,
5 they wouldn't have access to all of the coins;
6 it's just the frictional wallet. So they
7 would be replenished based on the expectation
8 of withdrawals. That's my understanding.

9 Q. Do you know if any information was
10 specifically given to customers about the
11 frictional wallets?

12 MR. McCARRICK: Objection to
13 form. Outside the scope.

14 You can answer.

15 A. I don't know off the top of my
16 head.

17 Q. Do you know who would know that?

18 MR. McCARRICK: Same
19 objection.

20 You can answer.

21 A. Probably talk to Oren about that.

22 Q. Oren? Okay. Part of that may be
23 marketing. So I think you testified that
24 Mashinsky himself did the marketing, or there
25 was somebody else named Tushar. Is that --

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2 A. Yeah. And Oren would probably
3 have better details on the handoffs. I even
4 think Oren was responsible for marketing for a
5 short period of time.

6 Q. Okay. Thank you. Regarding the
7 questions -- let's see. I guess, would Oren
8 have information about any sort of outside
9 communications, like content videos, Twitter,
10 YouTube, that kind of involvement, that kind
11 of information provided to the public as well?

12 MR. McCARRICK: Objection.

13 Outside the scope. Contract
14 information issues are outside the
15 scope.

16 But you can answer.

17 A. He would be in a better position
18 to talk about it than I would be because I had
19 no involvement in that.

20 Q. Okay. You came on as, I guess,
21 CFO -- and if I'm wrong, please correct me --
22 you came on as CFO in March of 2022.

23 Do you know when the Celsius board
24 first became aware that Celsius was insolvent?

25 MR. McCARRICK: Objection.

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2 Well beyond the scope.

3 You can answer if you know.

4 A. I did not come on as CFO.

5 Q. I'm sorry. Okay.

6 A. I came on as -- yeah. I came on
7 as head of financial planning and analysis and
8 investor relations. I was not at the -- I was
9 not at the board meeting.

10 Q. Okay. So you don't know the
11 answer as to when the board knew the company
12 was insolvent?

13 A. I've never met with the acting
14 board. I've only met with the special
15 committee board. I did not review the
16 minutes. I do not know the answer to that.

17 Q. Okay. Thank you.

18 You mentioned the focus on
19 reorganization or sale of the company. I
20 think you testified here and at the last
21 hearing that, out of your 170 employees on
22 staff, you have three focused on regulatory
23 compliance.

24 And I think it's clear that before
25 the case was filed, there were over 40

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2 regulatory bodies by states, including the
3 federal governmental entities in the US, and I
4 don't know what's going on internationally.

5 Is that correct, that you have
6 three employees that are focused on regulatory
7 compliance going forward -- I mean currently,
8 I guess?

9 MR. McCARRICK: Object to
10 form. Compound.

11 You can answer.

12 A. One clarification, I didn't
13 testify. I gave an opening statement.

14 Q. My apologies.

15 A. I just -- for the record, I just
16 want to make sure that the record is accurate.
17 Second, yes, three people in regulatory. We
18 work very close with Latham & Watkins as a
19 regulatory legal counsel.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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20 Q. I think my last question -- and I
21 apologize for the delay -- regarding the
22 actual movement of the digital assets on the
23 platform and entries on the debtors' ledger,
24 who at the company currently -- or in the
25 past, is no longer there -- would have the

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2 most information or be the most knowledgeable
3 as far as that movement and ledger activity?

4 MR. McCARRICK: Object to
5 form. Outside the scope.

6 You can answer.

7 A. I -- I'm processing. I apologize.
8 It's probably going to be the best -- the best
9 discussion would either be with Oren, who I
10 believe is being deposed tomorrow, or the head
11 of technology, Guillermo.

12 Q. And I apology -- I apologize, do
13 you know Guillermo's last name --

14 A. Starts --

15 Q. -- or could you find it out for
16 us? I apologize.

17 A. We can find it out and get right
18 back to you. I apologize, I'm a
19 first-name-basis guy. You know, nowadays with
20 e-mail, you just type in G-u and boom, it up
21 pops. I think it starts with a b.

22 Q. Completely understand. If you're
23 able to figure it out and provide that
24 information, that would really be helpful.

25 A. Okay. Yeah, we'll get it to you.

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2 Sorry about that.

3 MS. MILLIGAN: Thank you, sir.

4 That's all the questions I
5 have. I'll turn it over to any
6 other state regulator.

7 And I appreciate your time
8 today, sir.

9 THE WITNESS: Thank you.

10 MS. CORDRY: I guess that
11 might make me next up.

12 EXAMINATION BY

13 MS. CORDRY:

14 Q. I only have a few very simplistic
15 questions, I think, going back to this whole
16 motion of what you're spending and then your
17 stablecoins and so forth.

18 I think you've specified in here
19 that you have -- the debtor has regular
20 operating accounts, and those have real dollar
21 deposits in them, I would assume, at this
22 point?

23 CERTIFIED STENOGRAPHER: Could
24 you state your name and spell it for
25 me, please.

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2 MS. CORDRY: Oh, I'm sorry,
3 I'm sorry. It's Karen Cordry. And
4 that's K-a-r-e-n and last name is
5 Cordry, C-o-r-d-r-y. And I'm with
6 the National Association of
7 Attorneys General. I'm the
8 bankruptcy counsel there, and I'm
9 working with a group of about ten
10 states that are also participating
11 in this case that we filed an
12 appearance fee for.

13 CERTIFIED STENOGRAPHER: Thank
14 you.

15 BY MS. CORDRY:

16 Q. Okay. So going back to the
17 company, its ordinary course operating
18 expenses, are those primarily funded at this
19 point with normal, sort of, dollar deposits,
20 which, I guess, you call fiat currency?

21 A. Yeah. Most of the expenses are
22 paid in fiat currency. There are some
23 expenses historically where vendors took
24 stablecoins as payments. We would send it to
25 their wallet.

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2 Largely interchangeable native
3 crypto companies might take stablecoins,
4 payroll, you know, fiat. Most vendors --

5 Q. Yes.

6 A. -- fiat, yeah.

7 Q. And then currently you had I think
8 you said something in the range of about 160
9 to \$180 million in those accounts?

10 A. That's correct, yeah.

11 Q. Okay. And that you're currently
12 holding about \$18 million in stablecoin. Is
13 that in those same accounts as well?

14 A. The stablecoins are in the
15 Fireblocks wallets, not in the fiat accounts.
16 And the 18 million is not all of our
17 stablecoin, it's the stablecoin related to the
18 earn accounts.

19 Q. Okay. All right. So I was
20 thinking I was hearing you saying that this
21 \$18 million is not associated with any of the
22 earn, custody, or withhold accounts. But
23 you're saying it's not associated with custody
24 or withhold, but it does relate to the earn
25 accounts.

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2 A. This --

3 Q. Is that correct?

4 A. The stables relates to obligations
5 of earn, because what we've done is we've
6 excluded the custody holdings of stables, the
7 withheld amount in stables, and any of the
8 lending collateral that's stables.

9 Now, the lending collateral in
10 stables, there's very little because it would
11 be silly to borrow stables and provide
12 collaterals stables and then pay an interest
13 rate for it. So, in general, it's mostly the
14 custody program and the withheld program.

15 Q. Okay. So I was mishearing
16 earlier. So one of my questions was going to
17 be, if it wasn't associated with any of the
18 customer accounts, where did it come from?
19 But you're saying it does still associate back
20 to the earn accounts at this point?

21 A. There's obligations in earn but
22 these stablecoins are not associated with the
23 earn accounts. What I'm saying is we're
24 taking the total amount of stablecoins and
25 we're subtracting what relates to withheld and

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2 what relates to custody and lending.

3 So the remaining stablecoins are
4 due to operations and converting
5 cryptocurrency, as well as any obligations
6 that came in from earn. It could be -- it
7 could be dollars, stable -- excuse me -- it
8 could be stables that we borrowed from Tether.
9 Right?

10 These stables are fungible, so
11 it's -- we can't directly link them to
12 anything. But we know they're not related to
13 custody, withheld, or the lending program.

14 Q. Okay. And at this point, if I
15 understand what your view is that these are
16 essentially equivalent to fiat currency, they
17 can be converted to the same price, and what
18 you want to do is simply convert them into
19 dollars and then spend them in the same way
20 that you would spend any of your other funds.

21 Is that what I'm hearing you say?

22 MR. McCARRICK: Objection to
23 form.

24 You can answer.

25 A. Basically, yes.

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2 MS. CORDRY: I think that's

3 really all the questions I have.

4 Thank you.

5 THE WITNESS: Thank you.

6 MR. McCARRICK: Thanks.

7 Are there any other state

8 regulators who have any questions?

9 Well, hearing nothing, is this
10 a good time for a lunch break, then
11 we can come back and do the last
12 session? Does that work for
13 everyone?

14 MR. HERSHEY: Yeah, I think
15 that's a good idea.

16 MR. McCARRICK: Okay. Great.
17 Well, why don't we come back at
18 1:45.

19 MR. HERSHEY: Perfect.

20 MR. McCARRICK: Actually, you
21 know what, let's do 1:15.

22 THE VIDEOGRAPHER: The time is
23 12:38 p.m. This concludes Media 4.
24 Off the record.

25 (Continued on the next page.)

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(Lunch recess taken from

12:38 p.m. to 1:43 p.m.)

- - -

A F T E R N O O N S E S S I O N

- - -

(Time noted: 1:43 p.m.)

- - -

THE VIDEOGRAPHER: The time

now is 1:43 p.m. This begins Media

5. On the record.

C H R I S T O P H E R F E R R A R O, resumed

and testified further as follows:

EXAMINATION BY

MR. CREWS:

Q. Okay. Hey, there.

A. Hi.

Q. So I figured I'd just start
introducing myself. My name is Cameron Crews.
I'm a pro se creditor. I opened my Celsius
account in August of last year. And
initially, I started with a small deposit of
3.5 ETH, and as of today, I have \$27,000 worth
of stablecoins, a little under 1 Bitcoin, and

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2 21 Ethereum and then some related assets. So
3 at one point it was worth up to \$120,000, but
4 now it's a little under 70,000.

5 I, kind of, wanted to start, you
6 mentioned you began with Celsius in March of
7 this year. Correct?

8 A. Yes, yeah, March 21.

9 Q. And then do you yourself have a
10 Celsius account?

11 A. No. I am employed out of
12 Washington State, and I was not able to open
13 one.

14 Q. Okay. Are you -- would you have
15 been able to open one in Ecuador, though,
16 or ...

17 A. I don't know.

18 Q. I was wondering, in terms of the
19 terms of service, could you describe material
20 differences that were introduced in July
21 of 2021?

22 MR. McCARRICK: Objection to
23 form.

24 You can answer.

25 A. I don't have -- I don't have the

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2 details. I'm not an expert in it. So it
3 would be hard for me to describe the deltas
4 between one version and another other than,
5 kind of, 6 and 8. I know that that was the
6 big -- that was the launch of custody and the
7 terms of the exchange for that.

8 Q. Okay. So would you say -- would
9 you agree that at some point, when the assets
10 were custodied by -- it was Prime Trust, when
11 the company was headquartered in the UK or
12 England, those assets were considered customer
13 assets?

14 MR. McCARRICK: Objection.

15 Objection to form.

16 You can answer.

17 A. I think they were Celsius assets
18 with obligations to the customer. I don't --
19 I don't know that that was a custody
20 relationship. Like I said earlier, I'm not an
21 expert in the Prime Trust.

22 Q. Okay. So you would say at that
23 point that the title would still remain with
24 Celsius even at that point of the contract?

25 MR. McCARRICK: Object to

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2 form.

3 A. I'm not --

4 THE WITNESS: Sorry.

5 MR. McCARRICK: You can

6 answer.

7 A. I'm not an expert in the Prime
8 Trust, so I don't know exactly what was going
9 on.

10 Q. Okay. Are you familiar with a
11 change to Clause 8 titled "Ownership of
12 Digital Assets" that was made in July of 2001?

13 A. Not specifically, no.

14 Q. Okay. Let me share my screen. So
15 I have up here a highlighted version of a
16 prior to July 2001 and subsequent. And you
17 can see in the prior version, it says that
18 you:

19 "Hereby represent a warrant at
20 all times to us during which you
21 hold digital assets in your Celsius
22 wallet, that any digital asset used
23 by you in connection with your
24 Celsius wallet is owned by you."

25 Is that what it says?

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2 MR. McCARRICK: Could -- could

3 I just ask, is this -- are these

4 excerpts from -- I -- could you

5 just --

6 MR. CREWS: Yes.

7 MR. McCARRICK: -- lay a

8 little bit of foundation for what

9 you're asking about. I'm happy to

10 --

11 MR. CREWS: Certainly.

12 MR. McCARRICK: -- your

13 question.

14 MR. CREWS: Yeah. So I have a

15 GitHub repository here which looked

16 using the Internet archive Wayback

17 Machine at the different versions of

18 the terms of service at different

19 points in time.

20 So what you see here is a DIF

21 between the prior version and the

22 one that was introduced in July

23 of 2021.

24 So I've zoomed in on the

25 specific changes to this clause. So

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2 you can see the one that was
3 removed, this is -- the prior
4 version is here. And it's
5 highlighted in red. And I can send
6 the link to this.

7 MR. McCARRICK: We may ask for
8 it after.

9 MR. CREWS: Yeah.

10 MR. McCARRICK: I would
11 just -- Mr. Ferraro, if you don't
12 know what this is, what it comes
13 from, or what different kind of
14 versions it's, you know, dealing
15 with, just make sure you're
16 testifying as to your, kind of, own
17 personal knowledge.

18 But feel free to inquire.

19 MR. CREWS: Yeah. Okay.

20 THE WITNESS: I should have
21 brought my glasses.

22 MR. CREWS: Yeah. Sorry.

23 BY MR. CREWS:

24 Q. So then subsequently, the language
25 changes to say that:

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2 "Any digital asset delivered
3 by you for the purpose of utilizing
4 Celsius services."

5 So it's -- you're delivering it,
6 and then it added this clause here that:

7 "All digital assets transfer
8 to Celsius as part of the services
9 are owned and held by Celsius for
10 its own account."

11 So that didn't exist in the prior
12 terms of service?

13 MR. McCARRICK: Objection to
14 form.

15 You can answer to the extent
16 you know.

17 A. I don't know -- I don't know the
18 details of each terms of use. Like I said,
19 I've read through them, but I was not part of
20 drafting them, reviewing them, approving them,
21 so it's hard for me to give insight on the
22 specific changes.

23 Q. Yeah. Would you be surprised if
24 customers such as myself weren't aware that we
25 were transferring title of our assets?

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2 MR. McCARRICK: Objection to
3 form.

4 A. From my understanding, not a
5 customer, but in looking through the
6 materials, to me it is crystal clear in
7 Version 6 with a double-click necessary in
8 order to say the terms in use is transferring
9 the title to the Celsius.

10 Q. Yeah. Now, I happened to join in
11 August of that year, and I didn't get the
12 notifications that Oren Blonstein had sent --
13 there was all those e-mails. So because I had
14 joined subsequent to that, I wasn't made
15 aware of those -- I didn't receive any of
16 those e-mails.

17 A. But you would have clicked on the
18 terms of use when you opened your account.

19 Q. Presumably. I don't have
20 recollection of that.

21 A. Well, we know systematically that
22 everybody clicked on it, double-clicked on it,
23 Version 6, and it was crystal clear that the
24 ownership was transferring to Celsius --

25 Q. So --

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2 A. -- in order to pledge,
3 rehypothecate, lend, et cetera, sell.

4 Q. And did you have a digital
5 signature?

6 A. The system -- we -- Oren is
7 probably going to be the best way of going
8 through this, but the system does not process
9 new accounts without accepting.

10 Q. Yeah. Now, would you say that the
11 marketing efforts have been consistent with
12 the terms of service?

13 MR. McCARRICK: Objection to
14 form. Outside the scope.

15 You can answer.

16 A. I wasn't part of the company at
17 this point in time. I've read the risk
18 disclosure. I personally think it's clear.
19 Like I said, I focused on 6 and 8.

20 I did not -- like I said earlier,
21 I watched the sum total of about two or three
22 AMAs. So I was not following the marketing,
23 especially when you were coming on board as a
24 customer.

25 Q. Great.

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2 Yeah, I wanted to bring up Exhibit
3 E from my filing, 914. And it's just a
4 snapshot of one of the marketing things on the
5 home page that was from May 8 of this year.
6 And it says "Access your coins whenever, keep
7 them safe forever?"

8 Does that seem consistent with the
9 terms of service?

10 MR. McCARRICK: Just one
11 second.

12 First, object to form.
13 Outside the scope. Second, is the
14 bolding of "your" --

15 MR. CREWS: That was added by
16 me.

17 MR. McCARRICK: Okay.
18 You can answer.

19 A. My understanding is that users in
20 ordinary course prepausage could take their
21 coins off the platform. So, you know, once
22 they took the coins off the platform, title
23 transferred back to the customer.

24 Q. Okay. And could customers
25 unilaterally take coins off the platform?

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2 MR. McCARRICK: Object to

3 form. Outside the scope.

4 You can answer.

5 A. My understanding is in ordinary
6 course, if the customer wanted a withdrawal,
7 the customer would have a withdrawal.

8 Q. Okay.

9 A. Prepause.

10 Q. And let's say a customer deposited
11 USDC. What asset would they then be able to
12 withdraw?

13 A. They have an obligation to be
14 returned USDC in normal course.

15 Q. Okay. So if a customer has
16 deposited USDC in normal course, they'd be
17 able to withdraw the USDC. Did I get that
18 right?

19 MR. McCARRICK: Object to --

20 A. Prepause.

21 MR. McCARRICK: Object to
22 form.

23 You can answer.

24 A. Prepause, yes.

25 Q. Okay. Now, are you familiar with

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2 the swap feature?

3 A. Yes.

4 Q. Would a customer be able to swap
5 their USTC for another asset?

6 MR. McCARRICK: Object to
7 form.

8 You can answer.

9 A. If it was rolled out in their
10 location prepaue.

11 Q. Okay. Now, could you help -- I'm
12 a little confused by that because, if the
13 asset -- the USDC is Celsius and the title
14 belongs to Celsius, how is a customer able to
15 direct the changing of that asset into another
16 cryptocurrency?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. They're changing the obligation in
21 the ledger. So the Celsius owes you a USDC,
22 you swap it, we now owe you a Bitcoin. It's
23 in the obligation.

24 Celsius assets, we didn't
25 necessarily go out and swap USDC for anything.

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2 This is a ledger back-office transaction.

3 It's your obligation that was updated on the
4 swap.

5 Q. So if -- typically, as far as I'm
6 aware, if you have title to something, you
7 control what happens to that thing.

8 For instance, I can't -- if I had
9 a relation- -- like, if somebody had title to
10 a house, I'm not able to just change it to
11 something else, to a car. So the title holder
12 has the ability to determine what happens to
13 that asset.

14 So you help -- do you understand,
15 then, how the customer is able to direct this
16 change that Celsius holds title to?

17 A. Yes.

18 MR. McCARRICK: Objection --
19 to the form.

20 But you can answer.

21 THE WITNESS: Sorry.

22 A. Yeah, a little bit different than
23 the house. If you choose to sell your house,
24 the house actually sells. When you choose to
25 swap USDC for, let's say, Bitcoin, there's not

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2 necessarily an action on the side of Celsius.

3 We are not necessarily changing the coin

4 buying and selling Bitcoin for USDC.

5 Your obligation changes. So you

6 telling Celsius to swap this for that does not

7 necessarily change what we do with the actual

8 coin. That is under our control and under our

9 ownership. We're just changing the

10 back-office obligation to you. Now we owe you

11 a Bitcoin and not USDC.

12 Q. And the fact that it -- a swap

13 would not actuate, like, a blockchain

14 transaction would be how you were able to

15 provide that service free of charge?

16 MR. McCARRICK: Object to

17 form.

18 You can answer.

19 A. I don't -- I don't think it has --

20 the transfer title has anything to do with

21 free of charge. Free of charge was a pricing

22 decision, a marketing positioning place. We

23 wanted to roll out swap and make it have a

24 high uptake by the customers.

25 In May we were starting to think

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2 about charging swap fees, and those were being
3 rolled out until the pause happened.

4 Q. Okay. Let's see. Now, you
5 mentioned earlier that you'd read 50 letters
6 from customers. Is that correct?

7 A. Yeah. Over 50.

8 Q. Do you happen to recall a letter
9 from Rebecca Gallagher?

10 A. I wouldn't remember any names at
11 this point in time.

12 Q. Okay. Well, I can tell you a bit
13 about her situation. She's a fellow pro se
14 creditor. And she had sold her house and put
15 the proceeds into Celsius and has in her
16 account about \$350,000 in USDC stablecoins and
17 4 Bitcoin, among other assets. And she was
18 not aware that she was, you know, literally
19 giving her house away. We talked about house
20 titles a little while ago.

21 Can you -- do you think that, just
22 as a human, do you think that's fair, that she
23 now stands to potentially lose her life's
24 savings?

25 MR. McCARRICK: Object to the

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2 form.

3 You can answer.

4 A. So I grew up in a regulated
5 company. I worked for JPMorgan right down the
6 street. Okay? I joined Celsius March 21,
7 2022. I'm heartbroken. I'm sitting here in
8 front of you, and I'm heartbroken at this
9 situation.

10 And what I'm -- kind of, come from
11 a background where things were regulated and
12 stuff, this didn't happen -- right? -- the
13 FDIC would close down the company.

14 So Celsius and the customers
15 are -- it's a horrible situation.

16 THE VIDEOGRAPHER: Your
17 microphone.

18 THE WITNESS: Sorry.

19 A. It's a horrible situation. And
20 I -- every single day I wake up trying to get
21 value back. I can't control the previous
22 mistakes. I think this situation with Rebecca
23 is awful. And I want to help the situation.
24 That's why I'm here. That's why I sit in this
25 chair right now.

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2 Q. That's good to hear. Just, I
3 guess, switching to a somewhat related topic.
4 Are you familiar with promotional codes that
5 users were offered to deposit?

6 A. I've seen some of the, lack of a
7 better word, coupons of them. Right? Yeah.

8 Q. Yeah. One of them was offered in
9 the spring of this year, was labeled
10 B22SATS20000, where users could receive \$500
11 worth of Bitcoin if they were to deposit
12 \$20,000 worth of Bitcoin and then hold them on
13 the platform for, I believe, six months.

14 Now, I think part of the terms
15 would be, like, your deposit would be voided
16 if you were to withdraw any of the assets from
17 the platform.

18 Would that potentially encourage
19 users to keep their assets on the platform, do
20 you think?

21 MR. McCARRICK: Object to
22 form.

23 You can answer.

24 A. I mean, I think customers who
25 bring additional balances onto the platform

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2 because they're getting rewarded with Bitcoin,
3 \$500 of Bitcoin or whatever it is, there's
4 a -- there is a marketing program to try to
5 get people to come onto the platform and grow
6 balances. And yes.

7 So I think people probably added
8 additional funds, just like they would open a
9 checking account across the street if they
10 gave them \$250. Right?

11 So there was an incentive there
12 for people to bring on and to keep it there
13 for six months under your example.

14 Q. Yeah. Now, that particular promo
15 code had a clause where if the value of your
16 deposit declined, you would also forfeit the
17 rewards.

18 Are you aware of any notice that
19 was provided to customers if their account
20 balance dropped below that threshold?

21 A. I --

22 MR. McCARRICK: Object to
23 form.

24 Are you summarizing or reading
25 from something? Just want to make

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2 sure the record's clear.

3 MR. CREWS: I'm summarizing,
4 yeah.

5 MR. McCARRICK: Okay. Object
6 to form.

7 You can answer.

8 A. I don't know the details.

9 Q. Okay. I suppose, just to share a
10 bit of my situation, I had claimed that
11 deposit code in addition to a few others and
12 deposited \$26,000 worth of Bitcoin on around
13 March 9, I believe. And the promotion code
14 was voided because market price declined.

15 But I wasn't provided notice, in
16 which case there wasn't going to be a reason
17 to keep assets on the platform. So I just
18 wanted to fill you in on that.

19 A. We can -- we can look into --

20 MR. McCARRICK: Object --
21 yeah, object to form.

22 But I don't think there was a
23 question, so no call for a response.

24 THE WITNESS: Yeah.

25 MR. CREWS: Yeah.

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2 Q. Are you familiar with Aliza
3 Landes, who is or was the VP of retail lending
4 at Celsius?

5 A. I've heard the name. I believe
6 she is the wife of Daniel Leon and used to run
7 retail lending. This is way before my time,
8 and I've never met Aliza -- Aliza. Yeah.

9 Q. Okay. There was a statement she
10 made in 2020 about ownership of USDC and fiat
11 that customers would receive when taking out a
12 collateralized loan at Celsius. And I wanted
13 to just share that.

14 MR. CREWS: Share my screen
15 again.

16 Q. So in an AMA she hosted with
17 Celsius, she said -- this is in relation to
18 avoidance of default of loans. She said:

19 "Those are their funds and
20 their crypto, and they get to decide
21 what to do with it."

22 And there is a Twitter link here
23 where -- well, I don't think this is going to
24 play, but she's, you know, saying those words.

25 And do you think that this is

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2 consistent with the terms of service, as you
3 understand them?

4 MR. McCARRICK: Object to
5 form. Outside the scope.
6 Incomplete information.

7 But answer to the best of your
8 ability.

9 A. I'm not quite sure the context,
10 what she said around it. I go back to the
11 contract, the terms of use, and what it
12 explicitly states.

13 Like I said, I don't -- I have a
14 job. I don't watch YouTube. I -- I didn't
15 watch the AMAs. I definitely have not seen
16 Aliza. So I can't remark on what she may or
17 may have not said in 2020.

18 Q. Do you think Celsius has an
19 obligation to correctly inform their customers
20 of the obligations and risks when opening a
21 Celsius account?

22 MR. McCARRICK: Object to
23 form.

24 You can answer.

25 A. I would think -- again, I come

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2 from two decades in banking where -- highly
3 regulated. So I tend to look at the world
4 through that lens. Crypto is completely
5 different. But I generally think that
6 customers, you know -- or, sorry -- companies
7 that want to have customers for the long run
8 speak truth to them.

9 Q. I agree to that. There was one
10 other quote from that same AMA when she was
11 addressing customers who would be leery about
12 taking out a loan. And the way she explained
13 it was:

14 "You're not going into debt,
15 you're just borrowing against
16 something that you own."

17 And again, does that seem
18 consistent with the terms of service?

19 MR. McCARRICK: Objection.
20 Outside the scope. Incomplete
21 information.

22 Answer to the best of your
23 ability.

24 A. I don't know the context of what
25 she's saying, but this statement --

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2 THE WITNESS: Can you hold it
3 for one second --

4 MR. CREWS: Yeah.

5 THE WITNESS: -- just
6 because -- can you scroll up --

7 MR. CREWS: Oh, sorry.

8 THE WITNESS: -- because that
9 camera is in the way. I'm sorry.
10 Sorry about that.

11 A. Her -- the statement she makes --
12 says makes no sense to me. You're not going
13 into debt, you're borrowing. So I don't --
14 I'm not quite understanding what the sentence
15 even means. It's contradicting itself.

16 Q. I'd agree with that. And when I
17 went to withdraw stablecoins on June 13, I
18 wasn't able to. Could you explain why?

19 MR. McCARRICK: Object to
20 form. Outside the scope.

21 You can answer.

22 A. I believe that was under the
23 pause.

24 Q. Correct. So could you explain why
25 the pause was enacted.

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2 MR. McCARRICK: Object to

3 form.

4 You can answer.

5 A. I think most of this is noted in
6 the first-day declaration where it gives the
7 reasons for it. Right? Backdrop, difficult
8 marketplace; backdrop, have taken significant
9 legacy losses; backdrop, a lot of customer
10 withdrawals.

11 All of those things gave rise to
12 the pause, so we can take a breather, get
13 bankruptcy protection -- right, well, not at
14 that point in time -- take a breather. Then
15 when we filed, decided to get bankruptcy
16 protection, that way we can treat the estate
17 fairly. So ...

18 Q. So would part of that be that the
19 funds were not available to pay out more
20 withdrawals beyond that?

21 MR. McCARRICK: Objection to
22 form. Outside the scope.

23 You can answer.

24 A. I think we paused because
25 liquidity was getting short. And we didn't

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2 want to give benefit to the first person in
3 line to the detriment of the last person in
4 line.

5 Q. Now, would you say that somebody
6 who withdrew on June 12 benefited to the
7 detriment of somebody who tried to withdraw on
8 June 13?

9 MR. McCARRICK: Object --
10 object to form. Outside the scope.

11 You can answer.

12 A. I think that's a leg- -- like,
13 kind of, a bankruptcy question about our
14 withdrawals before the bankruptcy date
15 preferential. I don't know. I'm not an
16 expert in this space. I'm probably not the
17 right one to answer that question.

18 Q. Okay. But you estimated that
19 potentially there would be, if we were to go
20 to liquidation, customers might receive 50
21 cents on the dollar.

22 So do -- did the customer who
23 tried to withdraw on June 13 do anything
24 themselves differently, materially different
25 than the customer who withdrew 100 percent on

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2 the dollar plus rewards on June 12?

3 MR. McCARRICK: Objection to

4 form. Outside the scope.

5 You can answer.

6 A. I think that distinction is pre
7 and post pause. If you were pre, the -- you
8 know, you got a withdrawal. And if you were
9 post, the accounts were frozen.

10 Q. But the customer themselves wasn't
11 responsible for that, were they?

12 MR. McCARRICK: Object --
13 object to form. Outside the scope
14 and vague.

15 You can answer.

16 A. Not quite sure of the question.
17 I'm sorry.

18 Q. The question was: Did the
19 customer do anything to potentially get half
20 as much, in the event of a liquidation, if
21 they missed withdrawing before the pause?

22 MR. McCARRICK: Objection to
23 form. Outside the scope.

24 You can answer.

25 A. I mean, I don't think the customer

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2 would just withdraw before the pause, so they
3 were able to get their funds. Post pause, you
4 can't withdraw. Now it's handled by a
5 bankruptcy estate. So I think that's the
6 marker, is just pre and post pause.

7 I'm not going to cast, like, was
8 that customer hurting the other customer.
9 What I can say is we thought the pause was
10 right because we wanted to protect the people
11 that were on the platform.

12 Q. Okay. Maybe I'll put it just one
13 more way: Would you say that it's, like, a
14 customer -- the customer's fault for not
15 withdrawing it prior to the pause?

16 A. I don't think the fault is with
17 the customer at all. I mean, I think -- I
18 think it's -- again, go back to the backdrop
19 that I stated, bad marketplace, legacy losses,
20 there are significant withdrawals. It's a bad
21 situation.

22 The customer is not at fault.
23 Celsius -- Celsius had title to the assets.
24 Celsius took some -- did some bad
25 investments -- right? -- looking back. It's,

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2 kind of, a risk -- risk deployment. So
3 sometimes you win; sometimes you lose.
4 Celsius lost too many times.

5 Q. And you testified -- or -- this is
6 a testimony, I think. Right? That's the
7 correct term? You testified earlier today
8 that the return for what you deem
9 "surrendering of title" to our assets to
10 Celsius, that we received yield in return. Is
11 that right?

12 MR. McCARRICK: Object to
13 form.

14 You can answer.

15 A. And the ability to be on the
16 platform. Yield was the main consideration
17 but also, you know, safeguarding your crypto,
18 being able to see your account balance, stuff
19 like that, that was all listed in the terms of
20 use as well.

21 Q. Okay. Would you say that for
22 somebody such as myself who has only deposited
23 onto the platform, never withdrawn, that I've
24 not realized a benefit to this supposed
25 interest rate or return, whatever we want to

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2 call it?

3 MR. McCARRICK: Object to

4 form. Outside the scope.

5 You can answer.

6 A. Can you -- can you restate it, I'm

7 sorry.

8 Q. Yeah. Having deposited into

9 Celsius without withdrawing, I suppose, like,

10 in what real sense have I benefited from the

11 earn program?

12 MR. McCARRICK: Same

13 objections.

14 You can answer.

15 A. Your obligations have accrued

16 rewards. The problem is is we paused so you

17 couldn't get your funds out and now we're in

18 bankruptcy. That's the issue. The intent was

19 that you would earn your rewards and that you

20 would be able to quietly enjoy them.

21 Q. Yeah. So in order to realize that

22 benefit, the company needs to be able to have

23 the resources in order to pay those rewards

24 or -- and the principal?

25 MR. McCARRICK: Objection to

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2 form.

3 You can answer.

4 A. Yeah, in order to realize the
5 benefit, to monetize the benefit, there's some
6 benefit in just accruing -- right? -- you
7 stayed on the platform while you were
8 accruing. My understanding you didn't
9 withdraw. So there was some benefit as you
10 looked at your balance and the balance was
11 increasing over time.

12 The problem was we paused and now
13 we're in bankruptcy. So, yeah, I mean, the
14 issue is now we're an estate and we're trying
15 to maximize value to give back to yourself and
16 the other creditors.

17 So it's, kind of, like -- all of
18 your balance -- your balance includes all the
19 rewards, your obligation -- right? -- the
20 claim. So that's what we're fighting for is
21 to get you as much back on that claim amount
22 as possible.

23 Q. Okay. And was Celsius solvent
24 when it paused on June 12?

25 MR. McCARRICK: Object.

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2 Outside the scope. Form.

3 You can answer.

4 A. I think at the point when we
5 paused, when I think back, I think that's,
6 kind of, the point where Celsius said, We have
7 a solvency problem.

8 I was not part of that decision.
9 I was not with the board. I did not have
10 knowledge of that decision. I'm only saying
11 from where I sit today thinking back probably
12 that's the event where they said, We have an
13 issue with solvency.

14 Q. Yeah. And in the Mashinsky
15 declaration I believe he listed a \$1.2 billion
16 deficit which included assets with sell tokens
17 valued at hundreds of millions of dollars.

18 So that would seem to be
19 insolvency. Right?

20 MR. McCARRICK: Object to
21 form. Outside the scope.

22 You can answer.

23 A. I mean, that was at the bankruptcy
24 filing.

25 Q. Okay.

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2 A. So that was post the pause.

3 Q. Yeah. Sure.

4 A. And we filed for bankruptcy. So I
5 would assume that, kind of, says, yeah, we're
6 not solvent.

7 Q. And this insolvency would have
8 occurred over time, presumably. Correct?

9 MR. McCARRICK: Objection to
10 form. Outside the scope.

11 You can answer.

12 A. No. The balance sheet, the
13 balance sheet accrues and that takes losses
14 over time. But solvency is not a, you know,
15 sort of thing -- right? -- you at some point
16 in time become insolvent.

17 Now, I haven't studied -- studied
18 the definitions and all that type of stuff.
19 But, you know, there was ample liquidity, the
20 balance sheet, to my knowledge back then with
21 the value -- the accounting, following
22 accounting principles was, you know, had
23 equity.

24 The mining company, we had people
25 who wanted to invest that would have made the

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2 mining asset worth literally over \$1 billion.

3 So with the balance sheet, there
4 was a lot of value in that balance sheet. And
5 what happened was when the crypto prices and
6 the crypto market, kind of, went into this ice
7 age, the value of those assets decreased
8 massively, and our ability to monetize those
9 assets and get liquidity went away, and that's
10 what let up to the pause and then the filing.

11 Q. And just for clarity, when we're
12 talking insolvency, my understanding is it
13 would be when your liabilities exceed your
14 assets.

15 Is that a reasonable definition?

16 MR. McCARRICK: Object to
17 form. Outside the scope.

18 You can answer.

19 A. I think of it as, well, accounting
20 is like a -- not a practicing CPA anymore, but
21 from thinking back to my school days 25 years
22 ago, I think it's when you can no -- when you
23 believe that you cannot pay your obligations.

24 So it's a little bit of, you know,
25 your balance sheet is following specific

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2 things but, if you have a mining asset that
3 you think is going to be worth \$2 billion and
4 that you're going to monetize, you're probably
5 still solvent.

6 But again, I'm not a lawyer. I'm
7 not looking at the definition. That's my
8 understanding.

9 Q. Yeah. I mean, I would think that
10 liquidity would be your ability to pay your
11 obligations because you might have, you know,
12 hundreds of millions locked in mining that you
13 can't get access to today, so you can't pay
14 depositors who necessarily want their funds
15 back today, but you would be solvent, just
16 illiquid. So that would be a distinction
17 between those two terms.

18 But then insolvency would be you
19 have obligations that exceed even those
20 illiquid assets.

21 MR. McCARRICK: Are you asking
22 him to agree or disagree?

23 MR. CREWS: Just in terms of
24 clarifying the terms, yeah.

25 MR. McCARRICK: Okay.

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2 Objection to form. Outside the
3 scope.

4 You can respond.

5 A. I mean, I think insolvency is when
6 you can no longer pay your bills to some
7 extent, and your idea of a going concern goes
8 away. That means that the value of your
9 franchise is worth less than the liabilities
10 that you have.

11 Q. Yeah.

12 A. Crypto was booming. And the
13 balance sheet was, you know, recorded largely
14 at cost. Some of the investments were
15 mark-to-market.

16 Again, we thought the mining asset
17 was going to be worth billions. I don't -- I
18 wasn't with the company at that time. But
19 looking back, I think it's easy to think why
20 there was a going concern.

21 Q. Mm-hmm.

22 A. Right? And I think at the pause,
23 we were in the middle of this crypto winter.
24 We didn't think that there was a way out. I
25 think that's when they said, you know, that's

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2 triggered insolvency, pause, don't let people
3 go out anymore. And then we got to a point
4 where we decided that we have to file.

5 Q. Just for -- as clarity, I'll just
6 propose my definition of insolvency being when
7 all your assets, including liquid assets, are
8 subsumed by a greater -- your liabilities
9 essentially are larger than those -- all those
10 assets combined. So you have more liabilities
11 than your assets.

12 And under that definition, with
13 the bankruptcy filing there was a deficit of
14 1.2 billion?

15 A. 1.2 approximately, yeah.

16 Q. So you don't go from zero to 1.2.
17 It would have occurred over a period of time.
18 Correct?

19 MR. McCARRICK: Objection to
20 form. Outside the scope.

21 You can answer.

22 A. Yeah. It's what I said at the
23 beginning is that it just -- it doesn't
24 happen, but there's a tipping point where you
25 say, We're not a going concern anymore.

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2 It's important to note the
3 accounting includes the sell token on the
4 balance sheet, and when the sell token started
5 to decrease in value -- right? -- this, kind
6 of, hit the perfect storm.

7 So it wasn't just sell token, it
8 was other crypto assets were going down, the
9 mining company on -- in reality the bids went
10 dry, there was really no way to monetize that
11 asset. You see what's happening right now in
12 the space, we need a turnaround, and I think
13 that's when they, kind of, came to the
14 conclusion, Yeah, we need to pause.

15 Q. And you mentioned that you were
16 aware of a May board meeting that happened,
17 really, a couple of months after you joined?

18 A. Yeah. It was, I think, May 2. I
19 think it was one day, I could be wrong, but I
20 believe it was May 2.

21 Q. And were you present at that board
22 meeting?

23 A. No. I was in Quito, Ecuador.

24 Q. Did you have a chance to review
25 the examiner's interim report in reference to

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2 that meeting?

3 A. I read the examiner's report, yes.

4 Q. Yeah. There was a quote on page
5 78 that referenced the board meeting minutes
6 where it was acknowledged that Celsius'
7 capital "sits at near zero."

8 Would this have been May 2?

9 MR. McCARRICK: Objection to
10 form. No foundation. Calls for
11 speculation.

12 You can answer to the extent
13 that you're able.

14 A. My understanding the board
15 meeting -- my understanding is the board
16 meeting was on May 2. I was not at the board
17 meeting. I have not reviewed the minutes. I
18 reviewed the examiner's report just like you
19 did.

20 Q. Okay. I suppose the last on this
21 topic before changing would be: Would you
22 agree that the inability to withdraw assets
23 impairs their utility to your customers?

24 MR. McCARRICK: Objection to
25 form. Outside the scope.

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2 You can answer.

3 A. Yeah, I mean, clearly if the
4 customer is trying to withdraw, they want
5 their -- they want to get their title back to
6 the digital currency. And post pause that
7 wasn't -- that wasn't available. So obviously
8 that had a detriment to the overall customer.
9 And that's why we're here.

10 Q. Yeah.

11 A. We're here to maximize the value
12 and get as much as we possibly can back. It's
13 unfortunate how we got here, but, you know,
14 from the pause to the filing, you know, we now
15 go into an estate, and we're trying to fight
16 to get you back as much of your obligations as
17 we possibly can.

18 Q. And are you aware if rewards in
19 your Celsius account compound?

20 MR. McCARRICK: Objection to
21 form. Outside the scope.

22 You can answer.

23 A. My understanding is they get
24 deposited into your account every Monday. So
25 that would go into your balance, and then you

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2 would have a higher balance to earn off of.

3 Q. Okay. Is it fair, then, to say
4 that you're earning rewards on the rewards
5 that you're building?

6 MR. McCARRICK: Objection to
7 form. Outside the scope.

8 You can answer.

9 A. My understanding is that the
10 rewards on every Monday go into the overall
11 balance, and you earn on that higher balance
12 the next week. So you would be able to
13 compound or earn on your rewards or withdraw
14 it before the pause.

15 Q. And would title of the rewards --
16 could you address the title of those rewards.

17 A. Well, nothing's really happened.
18 Celsius is deploying assets, enjoying the
19 returns, and setting a reward rate that
20 increases your obligation.

21 There's nothing happening in the
22 marketplace for those rewards necessarily.
23 Yes, we're going to go out and we're going to
24 buy some sell tokens so we can pay them out in
25 rewards. If we have Bitcoin, that's on the

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2 balance sheet, we can pay -- give that out,
3 maybe we have to buy Bitcoin.

4 But a lot of the times we actually
5 didn't have to go into the marketplace to buy
6 what we were paying in rewards. It was just a
7 book entry into your obligation, the
8 liability, the back-office system.

9 Q. Okay. So if I have .78 Bitcoin in
10 my account and I earn some fractional reward,
11 you're saying that the title of the Bitcoin is
12 Celsius'. So I'm wondering what's the title
13 of the reward?

14 A. It's the oblig- --

15 MR. McCARRICK: Ob- --

16 THE WITNESS: I'm sorry.

17 MR. McCARRICK: No, you're
18 fine. You're fine.

19 A. No.

20 MR. McCARRICK: Objection to
21 the form.

22 You can answer.

23 A. It's the obligation that's
24 increasing, the IOU to the customer.

25 Q. Okay.

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2 A. That's accruing weekly. Every
3 Monday the obligation to the customer
4 increases.

5 Q. Okay. So it's an IOU.

6 A. Yeah. It's a loan from the
7 customer to Celsius transferring title for the
8 right to pledge or rehypothecate, sell,
9 otherwise invest.

10 MR. CREWS: Okay. I just want
11 to share my screen again. I have a
12 copy of this in paper.

13 MR. McCARRICK: Mark it as
14 Exhibit 3?

15 MR. CREWS: Sorry if it's a
16 bit small. This is a copy of the
17 1099-MISC form that I received for
18 the prior tax year.

19 Q. Could you explain why customers
20 were issued these tax forms?

21 MR. McCARRICK: Objection to
22 form. Well outside the scope.

23 But you can answer.

24 A. Sorry. You know, this is tax
25 code. So my understanding is that you were

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2 getting rewards which is counted as income.

3 Whether or not you actually pull, you know,

4 withdraw the coins or the rewards, the IRS

5 still recognizes that as income because your

6 obligation has increased.

7 In normal course you can withdraw,

8 get title back, and take your coins and put

9 them elsewhere. Right? In a world in which

10 you don't, the IRS is not interested in

11 whether or not you actually took it off or

12 kept it on. You're accruing reward income

13 here. Right?

14 So just like the liability, the

15 obligation in the back office, that's

16 increasing, and we're reporting that increase

17 as a taxable event for you.

18 Q. So --

19 A. That's my understanding, at least.

20 Q. Yeah. So you're saying because

21 the material amount of your account has

22 increased, the customers would then owe a tax

23 obligation based on that increase?

24 MR. McCARRICK: Object to

25 form. Outside the scope.

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2 Answer.

3 A. You're earning a reward. Whether
4 or not you take that reward off the platform
5 and turn it into fiat, the tax code, in my
6 understanding, doesn't care. They're saying
7 you earned a consideration of the rewards for
8 placing your coins on Celsius and transferring
9 title. You get a reward. That's a taxable
10 event. That's my understanding of the
11 situation.

12 Q. Okay. So rewards increase the
13 balance of your account, which you just said
14 was essentially an IOU?

15 A. It's an obligation. It's a loan
16 from the customer to Celsius, yeah, according
17 to the terms of use.

18 Q. Do customers have a tax obligation
19 if the value of their account increases with
20 the crypto markets?

21 MR. McCARRICK: Objection to
22 form. Outside the scope.

23 You can answer if you know
24 about customers' tax obligations.

25 A. I'm not a tax lawyer. I did pass

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2 the CPA exam 25 years ago. It's been a long
3 time.

4 My understanding is that price
5 appreciation or depreciation doesn't change
6 your tax. It's not until you actually have a
7 taxable kind of event where you sell your
8 crypto or something like that.

9 Just earning a rewards against
10 your obligation is also you earning something
11 in the IRS's mind. So if your price of your
12 coin is going up and down, your rewards will
13 go up and down.

14 But I believe, I'm not giving tax
15 advice, but I believe the only taxable event
16 if you do not trade, sell, swap, whatever,
17 crypto would be the rewards that you're
18 accruing to the obligation.

19 Q. So if I bought my Bitcoin at a
20 lower price prior to my depositing it with
21 Celsius, would I have a tax obligation upon
22 deposit?

23 MR. McCARRICK: Objection to
24 form. Very far outside the scope.

25 You can answer to the extent

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2 that you know about tax obligations.

3 A. I don't know. I think your basis
4 just goes up and down until you take it out.

5 But I'm not a tax expert. So --

6 Q. Yeah.

7 A. -- I'm not sure the answer to
8 that.

9 Q. The reason I ask is because if
10 title is transferred, presumably this would be
11 a tax disposal event.

12 Would you know anybody if you're
13 not able answer who --

14 A. I don't.

15 Q. -- at Celsius could advise?

16 A. I -- I don't know what the
17 question is. I'm sorry.

18 Q. The question is if we're saying
19 that title transfers from the customer to
20 Celsius upon deposit, would that be a tax
21 disposable --

22 A. I'm not a tax accountant. I can't
23 give you advice on tax. I don't know the
24 answer to that. What I do know is the terms
25 of use and what it says. I'm not giving tax

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2 advice. I'm not qualified to do that.

3 Q. Is there somebody at Celsius who
4 would be able to answer the tax obligation
5 questions?

6 MR. McCARRICK: Objection to
7 the form. Still outside the scope.

8 But you can answer if you know
9 anyone.

10 A. You would probably have to -- we
11 would probably have to have the conversation
12 with somebody in the tax department or the
13 legal department.

14 Q. Okay. Do you see how it could be
15 confusing for a customer to be paying taxes on
16 assets that Celsius holds title to?

17 MR. McCARRICK: Objection to
18 form.

19 You can answer.

20 A. What I know is we control the
21 terms of use. We do not control tax law. We
22 are not giving tax advice in the terms of use.

23 This is a contract between Celsius
24 and the customer that, in my opinion -- and
25 I've studied 6 and 8 -- is very clear. I

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2 can't speak to the tax side of it, sir. I'm
3 sorry, I can't.

4 Q. And do you think, just to bring up
5 my situation where I paid taxes on my rewards
6 and yet I'm missing, say, like \$100,000 worth
7 of crypto, does that feel like a fair
8 situation?

9 MR. McCARRICK: Objection to
10 form. Outside the scope.

11 You can answer to the extent
12 that you can.

13 A. I mean, my -- again, I'm not a tax
14 advisor. I'm not giving tax advice. If for
15 some reason the estate were to give you
16 everything back -- right? -- there would
17 probably be no taxing event. You'd get
18 everything back. You're made whole. If you
19 get back less, you might get a refund for the
20 rewards you accrued. But, again, I'm not
21 giving tax advice.

22 But let's say that we were only be
23 able to pay you back 50 cents on the dollar,
24 hypothetical, I think that that would be a tax
25 impact, and you would get some of your reward

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2 accrual back.

3 I'm not being an expert on tax
4 code. I'm just giving you my, kind of, mental
5 model of how I understand it works. So I
6 think it's timing. That's my understanding.

7 Q. Okay. And are you familiar with
8 the fact that there have been insiders who
9 have withdrawn assets from the platform in the
10 last year?

11 MR. McCARRICK: Objection to
12 form. This has nothing to do with
13 the motion.

14 You can answer.

15 A. I've seen the statements and
16 schedules, I signed off on them. I spoke at
17 the 341 meetings where I took questions on
18 this, so I'm aware of the distributions. And
19 I'm also aware that two of the founders, Alex
20 Mashinsky and Daniel Leon, are no longer with
21 this company.

22 Q. And they both withdrew millions of
23 dollars worth of assets from the platform?

24 MR. McCARRICK: Object to
25 form. Well outside the scope.

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2 You can answer.

3 A. It was in the statements and
4 schedules, yes, sir. Yeah, it was
5 disappointing to see one way or another --
6 right? -- It's ...

7 Q. And are you familiar with Celsius
8 having relationships with crypto influencers,
9 partnerships?

10 MR. McCARRICK: Object to
11 form. Outside the scope.

12 You can answer.

13 A. Not directly, not even loosely,
14 but from -- and, like, my Twitter account is
15 not very old. I've never posted on Twitter.
16 I don't have Facebook or any of that type of
17 stuff. So I'm not an active what you would
18 call a social media guy. So I don't like the
19 influencer thing. I've never really followed
20 it.

21 But my understanding is that there
22 was influencers that were, kind of, explaining
23 how Celsius worked, but that's the
24 knowledge -- that's the extent of the
25 knowledge that I have.

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2 Q. Yeah, my understanding is from the
3 court filings that there was some compensation
4 that certain Celsius partners were provided.

5 Would that be a reasonable guess?

6 MR. McCARRICK: Object to
7 form. Don't know the basis for
8 that.

9 You can answer to the extent
10 you know.

11 A. I basically know what you just
12 said -- right? -- there was influencers, they
13 probably got some, sort of, consideration for
14 their efforts. I'm not sure -- I don't know
15 how they were paid, I don't who was paid, I
16 don't know how much it was.

17 But I understand that there was
18 influencers that got consideration for
19 marketing Celsius.

20 Q. Okay. I wanted to bring up a few
21 of the most well-known influencers who
22 withdrew assets from the platform.

23 Are you familiar with one called
24 Lark Davis?

25 MR. McCARRICK: Just before we

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2 get there, what court filings is
3 this from, just for the record?

4 MR. CREWS: This is from the
5 947-1. So page 2,930. It's a
6 combination of the balances report,
7 the 947 plus the SOFA 940 -- 973.

8 MR. McCARRICK: Okay. So this
9 is information from --

10 MR. CREWS: Combined, yeah.

11 MR. McCARRICK: -- separate?
12 Okay. Understood. I'm just going
13 to have a standing objection to
14 this, but -- I think it's outside
15 the scope but continue to ask
16 questions.

17 BY MR. CREWS:

18 Q. So Lark Davis, aka CryptoLark, I
19 believe had a partnership with Celsius. He
20 drew down his balance to virtually nothing and
21 withdrew 2.45 million over the course of May.

22 Were you aware of that?

23 MR. McCARRICK: Objection to
24 the form. Outside the scope.

25 You can answer.

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2 A. I don't -- I don't know the
3 individual. I don't know the specifics of
4 those withdrawals.

5 Q. Okay. There's another individual
6 known as Ben Armstrong, goes by the handle
7 Bitboy. This is on page 1,555 of
8 Document 947.

9 There are three different Ben
10 Armstrongs listed, two Ben Armstrongs and one
11 Benjamin Armstrong, both of which have
12 depleted accounts. However, his -- Ben
13 Armstrongs, these two Ben Armstrongs are
14 missing from the 973 SOFA filing.

15 Would you be able to explain why
16 an entry might be missing from the SOFA
17 document?

18 MR. McCARRICK: Objection to
19 form. Outside the scope. Not sure
20 it is an accurate rendering.

21 But you can answer to the
22 extent that you're able.

23 A. We spent an immense amount of time
24 preparing the schedules, internally and with
25 the advisors; I reviewed them. Obviously I

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2 don't review it, every line on them, it
3 wouldn't be possible. And it wouldn't be a
4 good use of my time while I'm trying to work
5 on the dual-track process.

6 So I think that -- I can't speak
7 to an individual transaction or whatnot. But
8 I can tell you that we spent a tremendous
9 amount of effort on the schedules. This was a
10 massive lift. You're talking about a company
11 that, you know, venture to guess that none of
12 the employees have been through a Chapter 11
13 process and everything changes -- right? --
14 after that.

15 And you have to do these types of
16 reports, and these -- you got to really
17 mobilize the organization in order to do it.
18 And I think we did it. We can follow up on
19 any specifics, but I can't speak to it.

20 Q. In terms of following up, what's
21 the best mechanism for doing that?

22 MR. McCARRICK: Objection to
23 form. Outside the scope.

24 A. We would have to analyze the
25 schedules and see what's happening. I mean,

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2 there's so many transactions embedded in the
3 schedules. I think it was something like
4 10,000-plus pages. So we just have to go
5 through it. But there was quality checks and
6 reviews. Anything's possible but there was a
7 lot of effort in checks that went into this.

8 Q. And in terms of this specific case
9 where an entry I'm asserting is missing, is
10 there a mechanism by which I can raise that
11 with you?

12 MR. McCARRICK: Object to
13 form. This has absolutely nothing
14 to do with the current motion.

15 You can answer it to the
16 extent that you're able.

17 A. I'd have to follow up internally
18 with the specifics. Maybe you can provide it
19 to T.J. and Kirkland, and then we can follow
20 up. I'm not sure of the channels and how I
21 can get back to you, if that's even allowed.

22 I know this is -- I don't believe
23 this is your account. So this would be -- I
24 don't know if I can go in transaction history
25 and give you information about it. But we can

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2 verify it and follow up and get back to you.

3 MR. McCARRICK: Can I just
4 take a pause. It's my understanding
5 that someone on the Zoom is tweeting
6 live. Perhaps they weren't here at
7 the beginning. Anyone who's on the
8 Zoom has signed the protective
9 order. The entire transcript has
10 been designated confidential, which
11 means that you can't live tweet it,
12 you can't disclose it outside of
13 those who have a right or bound by
14 the protective order. So I'm going
15 to ask that individual to
16 discontinue that.

17 And as I said on the back end,
18 we're happy to work with the
19 designations as to confidentiality,
20 but the reason I designated the
21 entire transcript confidential was
22 exactly for this reason. So I would
23 just ask that person to stop
24 tweeting. And if it continues, we
25 will end the deposition.

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2 You can continue.

3 BY MR. CREWS:

4 Q. So I think we just left off with
5 the mechanism being to speak to T.J. about
6 deficiencies, if there were anything missing.

7 I'm going to switch to -- I have
8 here a spreadsheet that I believe was
9 extracted from the SOFA report or I think it
10 was the 947 document. This is a listing of
11 merchandise purchases that Celsius made with
12 USA Strong.

13 Are you familiar with the company
14 USA Strong?

15 MR. McCARRICK: Objection to
16 form. Outside the scope. I don't
17 know that we're able to review the
18 full document.

19 But you can answer to the
20 extent that you're able based on the
21 information that's displayed.

22 A. I can't see the information on the
23 screen, but if you're asking me do I know what
24 USA Strong is, I believe it's a related party
25 to Alex Mashinsky, but his wife, Krissy

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2 Mashinsky, I believe owns and runs USA Strong.

3 Q. Yes. And last year -- or I guess
4 over the last year, not calendar year, but in
5 the filing they've made \$118,000 worth of
6 purchases with USA Strong -- Celsius has made
7 those purchases with USA Strong.

8 MR. McCARRICK: Object to
9 form. Outside the scope of the
10 limited stablecoin motion.

11 You can answer to the extent
12 that you're able to understand or
13 able to verify the information
14 that's up there.

15 A. Was there a question? I'm sorry.

16 Q. I'm wondering if you could maybe
17 just put into context this relationship with
18 USA Strong.

19 A. Okay.

20 MR. McCARRICK: Same
21 objections.

22 Go ahead and answer.

23 A. So I'm not going to focus on the
24 numbers, I'm going to just explain -- answer
25 your question, my understanding of the

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2 relationship.

3 So like I said, I believe it's
4 Alex Mashinsky's wife, Krissy Mashinsky. USA
5 Strong, I believe these were for the purchases
6 of merchandise largely for promotional
7 giveaways. I think Bitcoin conferenced they
8 need to make 1,000 Celsius T-shirts. This is,
9 I believe, the merchandise that that would be
10 related to. T-shirts, backpacks, you know,
11 things that you give away for promotional
12 events.

13 Q. Okay. And does this seem like a
14 reasonable purchase figure for the types of
15 events that you're talking about?

16 MR. McCARRICK: Object to
17 form. Outside the scope.

18 You can answer.

19 A. I haven't studied and looked at
20 the price per item and shopped it to other
21 items -- right? -- because this has all
22 happened in the past, and I'm focused on the
23 estate.

24 My understanding is, you know,
25 there was a lot of Celsius T-shirts, there was

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2 a lot of Celsius backpacks, and that this
3 would have been done in the ordinary course,
4 to my understanding.

5 Q. And is it correct that Celsius'
6 headquarters is in Hoboken, New Jersey, at 221
7 River Street?

8 A. Yes.

9 Q. And are you aware or would you
10 know somebody who is aware --

11 A. It was, sorry. It was the
12 headquarters. We rejected the lease and we're
13 no longer in that office space, yeah.

14 Q. Would you know or be able to
15 confirm if USA Strong previously held a lease
16 in that building?

17 MR. McCARRICK: Objection to
18 form. Outside the scope.

19 A. I do not know. I've never heard
20 anything about that, so this would be the
21 first time I heard it. I -- I visited the
22 office building on my first day of work on the
23 22nd, and I think I left the Wednesday. So I
24 was at that building Monday, Tuesday,
25 Wednesday, and that was the last time I saw

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2 it.

3 MR. CREWS: Okay. I think
4 that is the balance of the questions
5 that I have. So I'll yield to the
6 other per ses.

7 THE WITNESS: Thank you.

8 MR. McCARRICK: Okay. I think
9 we're now to the virtual pro ses.
10 I'm not sure if you all internally
11 worked out an order about who would
12 be next. But next questioner up to
13 that, if you could announce yourself
14 and say and spell your name for the
15 court reporter's benefit.

16 And thank you, Mr. Crews.

17 MR. CREWS: Thanks.

18 MR. KHANUJA: This is Kulpreet
19 Khanuja. I'm a pro se own creditor
20 K-u-l-p-r-e-e-t K-h-a-n-u-j-a.

21 EXAMINATION BY

22 MR. KHANUJA:

23 Q. Mr. Ferraro, before I begin
24 specific questions, can I ask one generic one.
25 So when you became the current CEO, would you

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2 say in terms of doing your job, you would be
3 required to gather knowledge and background on
4 Celsius' business operations and decisions
5 taken before your time by Celsius business
6 executives?

7 A. As it pertains to decisions I have
8 to make about the future, absolutely.

9 Q. So I'm asking this because many
10 questions you mentioned, this was before your
11 time or you weren't aware what happened.

12 So my particular question is: Was
13 there any formal knowledge transfer session,
14 and also if there was any obstruction or
15 pushback from Celsius to provide you
16 historical -- required historical knowledge to
17 answer questions?

18 A. I -- I go to work every day
19 fighting to make -- create value, preserve
20 value for the estate. If there was historical
21 things that impact my go-forward decisions, I
22 studied them, I asked about them.

23 If it's historical stuff for
24 historical purposes that don't change the
25 future, I don't think it would be a good use

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2 of my time to maximize value for the estate
3 going back, looking at every decision, every
4 thing.

5 I'm trying to understand where the
6 business is today, maximize value under a
7 dual-track process. I'm doing my best to
8 answer every question I possibly can. I've
9 been with this company since March 21.

10 Q. Yeah. That's fair. One thing I
11 would recommend is to go through the terms of
12 service, prior versions, not just 6 and 8 as
13 well, because there were things in there, no
14 mention of rights of ownership and those kinds
15 of things, and people actually signed up
16 before Version 6 as well.

17 So that would probably give you
18 more idea about the other questions we're
19 going to pose as well.

20 MR. McCARRICK: Object --
21 object --

22 Q. No --

23 MR. McCARRICK: Hold on.
24 Object to form. That wasn't a
25 question, that was a statement.

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2 So just wait for the next
3 question, and then you can answer.

4 MR. KHANUJA: Okay.

5 Q. Mr. Ferraro, you mentioned to
6 Mr. Hershey that, per your knowledge,
7 customers deposited their assets and
8 transferred ownership of assets to Celsius in
9 exchange for rewards. Say, if a customer
10 deposited, say, 100 Bitcoins and was paid 5
11 percent in rewards, would the customer expect
12 105 Bitcoins back or just 5 Bitcoins back?

13 MR. McCARRICK: Object to
14 form.

15 You can answer.

16 A. The obligation would be the
17 Bitcoin you deposited, plus your rewards.

18 Q. 105. So you would say the
19 customers would not be happy exchanging their
20 100 Bitcoins for 5 Bitcoins in return?

21 A. I don't know why --

22 Q. They'd get 105.

23 A. Yeah, I think that's how the back
24 office system works. That's -- we would
25 accrue rewards to your obligation, and your

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2 obligation in this example would be 105 and
3 the claim would be 105.

4 Q. Yes. Okay. So are there Celsius
5 insiders or employees who transferred their
6 assets from earn to custody after custody
7 f- --

8 MR. McCARRICK: Objection to
9 form.

10 Q. -- say, from April 2022 --
11 April 2022 until, say, when the deposits were
12 warranted?

13 MR. McCARRICK: Objection to
14 form. Outside the scope.

15 You can answer.

16 A. I have seen the statements and
17 schedules, as you probably have, yes.

18 Q. Yes. So they're -- so now they're
19 able to get 105 percent back while other
20 owning customers are not able to?

21 A. I don't --

22 MR. McCARRICK: Objection to
23 form.

24 You can answer.

25 A. I'm not sure that's accurate. I

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2 believe people in custody right now were
3 trying -- you know, this is still an
4 outstanding legal question, and the employees
5 and transfers has not been decided. And it's
6 outside of my lane, sir. It's outside of my
7 lane.

8 Q. But -- okay. Thank you. But
9 that's a relevant question with regards to
10 custody and earn and who gets what?

11 MR. McCARRICK: Objection to
12 form.

13 You can respond.

14 Q. Okay.

15 A. I mean, I think it's a relevant
16 question that the judge will rule on.

17 Q. Sure. Yeah. Now, in your
18 document or the statement you filed, I'm
19 looking at paragraph 21. And I can quote. It
20 says:

21 "The functioning of these
22 deployment activities depended upon
23 the debtors having unilateral
24 authority to effectuate these
25 methods and strategies in their

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2 discretion. To accomplish this, the
3 terms of use included a variety of
4 provisions regarding the formal
5 transfer of ownership rights for
6 coins transferred into the earn
7 program."

8 Now, can you explain what

9 constitutes a formal transfer of ownership?

10 No title transfer document, no sale agreement,
11 no price of sale, no tax liability, just
12 transferring assets into Celsius to earn
13 rewards, will that constitute a formal
14 transfer of ownership?

15 MR. McCARRICK: Object to --

16 object to form.

17 You can answer.

18 A. My understanding is in the terms
19 of use, there's a contract between the
20 customer and Celsius. And the customer
21 clicked the box to accept and clicked
22 "accept."

23 That was the contract that
24 transferred title from the customer to
25 Celsius. That was the action and the

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2 consideration that was done at that point in
3 time in time.

4 Q. Can you point to me the specific
5 language in the terms of service that states
6 "formal transfer of ownership"?

7 MR. McCARRICK: Object to
8 form. The terms of service aren't
9 in front of me.

10 But you can answer to the
11 extent that you know generally.

12 A. I will tell you, sir, Oren
13 Blonstein tomorrow will be here to talk about
14 the terms and use. I believe he is
15 knowledgeable in this space.

16 Q. Okay.

17 A. I have not been part of
18 discussions of terms of use with Oren in
19 detail so I don't -- I just don't know the
20 answer to what terms of use said in that. But
21 to me in looking at the screenshots and in
22 reading the terms and use, to me it's clear,
23 it's crystal clear.

24 Q. So to you it's crystal clear that
25 the customers transferred the ownership of the

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2 assets to Celsius. Now, what about the
3 customers who transferred assets to Celsius
4 before this particular clause and section of
5 paragraph was included in terms of service,
6 the prior version's terms -- before terms 5 or
7 6? They didn't sign up for that, so they
8 didn't transfer the ownership?

9 MR. McCARRICK: Objection to
10 form. Mischaracterizes.

11 You can answer.

12 A. I'm just going to read back what
13 you read to me, sir:

14 "It is my understanding that
15 every version of the terms and use
16 includes one or more provisions
17 authorizing the debtors to make
18 unilateral updates to the terms and
19 use."

20 I stand by that statement.

21 Q. Okay. Now, in the very first
22 terms of service for Celsius, there is the
23 Section 14 or paragraph 14, it's called
24 "Consent to Celsius' Use of Your Digital
25 Assets." Now -- emphasis on "Your Digital

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2 Assets."

3 Also the terms of use Version 1,
4 paragraph 31, expressly it's stated that
5 notice of changes to the terms of service
6 would be provided with the specific additions,
7 deletions, or subtractions to the terms of
8 use.

9 Would you say additional losses
10 around transfer of ownership to Celsius from
11 customers in the July 2021 version is a
12 material change --

13 MR. McCARRICK: Object --

14 Q. -- if that clause was not there
15 earlier?

16 MR. McCARRICK: Object --
17 objection to form. Incomplete
18 hypothetical.

19 You can answer.

20 Q. Can you still answer?

21 MR. McCARRICK: Yeah, I'm
22 going to let him answer.

23 A. Sorry, I just have to --

24 Q. Do you -- do you think that was a
25 material change that was inserted in the new

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2 versions?

3 A. Sir, I do not have the terms and
4 use in front of me. I have two different
5 documents in front of me, neither which is the
6 terms of use. I don't off the top of my mind
7 know those details. I apologize.

8 Q. But in your statements --

9 A. In this --

10 Q. In your statements, you do mention
11 that, to your knowledge, and it's crystal
12 clear, all the terms of version -- all the
13 terms of use --

14 A. Yes --

15 Q. -- state that these --

16 A. It is.

17 Q. -- account transfer of ownership,
18 but you also claim you have not read the
19 initial versions?

20 MR. McCARRICK: Objection to
21 form. Mischaracterizes the
22 testimony.

23 You can -- you can answer as
24 to whether or not you've read all
25 the different versions.

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2 A. That's not what I said. I said
3 I've read the versions. I don't memorize
4 them. I didn't draft them. I'm not an expert
5 in it. I've done my best to prep for this
6 session so that I could take questions from
7 creditors and try to give you guys as much
8 information as I possibly can. But, sir, I
9 have not memorized the terms of use.

10 Q. But --

11 A. They're not -- they're not in --
12 let me just finish, I'm sorry -- they're not
13 in front of me. What I've read is 6 and 8 is
14 very clear to me. And what I've also read is
15 the unilateral updates to the terms of use is
16 also very clear to me.

17 I've also seen in the filings
18 screenshots of what the customer would have
19 checked boxes twice, and I've seen the
20 e-mails, pop-ups, et cetera.

21 We even had a period that I read
22 of two weeks where they would, kind of, lose
23 access to swap trade deploy, and they would
24 have to talk to a customer care person. To
25 me, I read that as a pretty strong process to

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2 make sure that the customers knew that they
3 were double-checking things.

4 MR. McCARRICK: We've been
5 going for -- we've been going for
6 about an hour, maybe an hour and two
7 minutes. I've got it here. Can we
8 take a ten-minute break, and then I
9 think the balance of the hour that's
10 remaining for the pro se creditors,
11 if -- I know you all are, kind of,
12 forming your own queue, but --

13 MR. KHANUJA: Well, I have
14 just a few small portions if we
15 can stop after that.

16 MR. McCARRICK: Sure. Yeah,
17 if you want to finish your few
18 questions, then we can take a break
19 and the queue can form. Sure, thank
20 you.

21 MR. KHANUJA: And I'll try to
22 be quick now, you know, so that I'm
23 fair to other questioners, other
24 people as well.

25 BY MR. KHANUJA:

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2 Q. Now, Celsius' terms of use clearly
3 state that customers can withdraw their
4 digital assets at any time. Now, this is from
5 all versions, including the versions you
6 reference, terms of use Versions 6 and 8. It
7 says you can withdraw your digital assets at
8 any time.

9 Now, if these were Celsius' assets
10 and not our assets, why would you allow your
11 customers to withdraw them?

12 A. We have --

13 MR. McCARRICK: Object to
14 form.

15 You can answer.

16 THE WITNESS: Sorry.

17 A. We have an IOU to the customer.
18 The customer has loaned us the digital assets.
19 So upon withdrawal in normal, ordinary course,
20 the user can request the obligation to be
21 returned to them.

22 Q. Yes. Right. So these were our
23 assets. Now, you mentioned -- you use the
24 term "loan." Can you define a loan?

25 You come from a rates background

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2 in JPMC. You cite a rates department. You
3 were probably an FP&A for them. Correct?

4 A. No, sir, I was not. I was not
5 FP&A for rates. I was --

6 Q. Okay. Well, so in general, rates
7 and loans, they're a fairly similar kind of
8 product. Would you be able to define a loan
9 for me?

10 MR. McCARRICK: Object to
11 form.

12 You can answer the definition
13 of loan.

14 A. I think rates is also derivatives
15 of -- and futures and spot markets --

16 Q. And --

17 A. -- for interest rates --
18 whereas --

19 CERTIFIED STENOGRAPHER:

20 Sorry. One at a time. One at a
21 time.

22 A. -- whereas loans is a credit. One
23 person is -- has net value to provide to the
24 other that wants to borrow that.

25 So in reality, a loan is different

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2 from a rate. Lending demand does have
3 influence on overall rate at a macro level,
4 but I wouldn't say the two are one-for-one the
5 same.

6 Q. No, not one-to-one the same. But
7 rates do impact the loans, as you said. And
8 you have decent understanding of that.

9 In loans have you ever seen
10 transfer of ownership?

11 MR. McCARRICK: Objection to
12 form.

13 You can answer.

14 A. I -- I've seen the loan between
15 Celsius and its customers in reading the terms
16 of use.

17 Q. No, I'm talking others. I'm
18 talking about in general. Have you ever seen
19 a definition of loan saying transfer of
20 ownership?

21 MR. McCARRICK: Objection to
22 form.

23 You can answer.

24 A. Off the top of my memory, I was
25 in -- you've got to remember that I was in

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2 consumer lending. So when somebody -- when
3 somebody borrows against their house, the bank
4 will put a lien on their house.

5 When somebody borrows against --
6 for a car, the bank will put a lien on a car.
7 That's my understanding of --

8 Q. Is a lien the same as transfer of
9 ownership?

10 A. That's --

11 MR. McCARRICK: Objection to
12 form.

13 You can answer.

14 A. It's a different instrument. It's
15 a different terms of use.

16 Q. Yeah. I'm from the same
17 background as you, so I don't think lien is
18 the same as transfer of ownership. But we can
19 move on.

20 It also says, you know, that --
21 and I'm going to quote from the terms of use
22 Version 5. It says:

23 "You may make a complete or
24 partial withdrawal of eligible
25 digital assets from your Celsius

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2 wallet at any time," and that

3 "Celsius initiates the withdrawal

4 process immediately."

5 And then the latest version, which
6 was from, I think, April 14, 2022, subject to
7 these terms, per any of your eligible digital
8 assets that you elect to utilize in the earn
9 service, you have a call option on all loans
10 made to Celsius to demand immediate, complete,
11 or partial repayment of any loan.

12 You can, through a complete or
13 partial withdrawal of eligible digital assets
14 from your Celsius account balance at any time.

15 So for us it was always available
16 to, you know, based on this language, would
17 you say we would always have access to our
18 assets from Celsius?

19 MR. McCARRICK: Objection to
20 form. Incomplete. The document is
21 not in front of him.

22 But answer to the best of your
23 ability.

24 A. And my understanding in reading
25 through the terms of use is that in normal

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2 course, the customers can withdraw. I think
3 there was areas in the terms of use that
4 allowed us to pause; market events, Celsius
5 events, et cetera.

6 So I think in normal terms, yes,
7 the customer should be able to demand
8 withdrawal and get their cryptocurrencies.

9 Q. So again, my argument goes back
10 again that to you it's crystal clear that
11 these were Celsius assets, yet customers would
12 be able to withdraw all their assets at all
13 times?

14 A. In normal course, yes, sir.

15 Q. So these were our assets as well
16 as Celsius' assets?

17 MR. McCARRICK: Objection.

18 Mischaracterizes.

19 You can answer.

20 A. Celsius' assets with an obligation
21 to the customer, sir.

22 Q. Okay. Now, Mr. Ferraro, you
23 mentioned in a response to Mr. Hershey, and I
24 quote, your sole objective is to maximize the
25 value to the estate and the creditors.

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2 You also mentioned in another
3 response, and I quote:

4 "We are aligned with
5 creditors, and the creditors want
6 their coins back."

7 So you want to maximize the value
8 to the creditors, and creditors want their
9 coins back, yet you are also arguing in your
10 prior statements that these are not creditor
11 assets. Celsius controls ownership of the
12 assets.

13 What is the guarantee that if you
14 go ahead with the Celsius reorg, you end up
15 declaring all of these coins as Celsius assets
16 and then return nothing to depositors -- to
17 creditors?

18 MR. McCARRICK: Objection to
19 form.

20 You can respond to that, I
21 suppose.

22 A. My understanding of the Chapter 11
23 process is that there's maximizing value for
24 the estate in the claims process. And through
25 the claims process, the value will be

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2 distributed back to the creditors.

3 Q. But technically, you can claim
4 these as your assets, the way you -- the way
5 Celsius is doing it right now. So the claims
6 will become invalid then, won't they?

7 MR. McCARRICK: Objection to
8 form.

9 You can answer.

10 A. I'm a little bit confused about
11 where you're going. My understanding --

12 Q. We are -- we are confused as well
13 and exactly why our question, whether these
14 are our assets or your assets.

15 A. Well, we -- sir, I'm sorry. We
16 went through that. I think your question was
17 about the bankruptcy process in maximizing
18 value for the estate and the claims process.
19 What I was --

20 Q. My question is: Beyond maximizing
21 value, you can still claim these as your
22 assets and then give nothing back to
23 creditors?

24 MR. McCARRICK: Objection to
25 form. Mischaracterizes.

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2 Mr. Ferraro, you can respond.

3 And I'd appreciate if you
4 would allow him to finish his
5 response.

6 THE WITNESS: Thank you, sir.

7 A. My understanding is that's not the
8 way the bankruptcy code works and that's not
9 the way that the judge or any trustees will
10 protect and distribute value in the estate.

11 Q. Okay. Now, Mr. Ferraro, in
12 response to United States Trustee today, you
13 mentioned you joined sometime in March 2022, I
14 think it was --

15 A. Yes, March 21, 2022.

16 Q. Was it as the CFO?

17 A. No. It was the head of financial
18 planning and analysis and investor relations.
19 I became the CFO in the middle of July. I
20 believe it was July 13.

21 Q. Okay. So until you became a CFO,
22 you were not responsible for asset liability
23 management or treasury or even payroll and
24 taxes. Is that fair?

25 A. I was not the treasurer. I was

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2 not the controller. I worked with those
3 areas, but I was not responsible for them.

4 Q. Okay. I'll -- I'll ask just one
5 question from this track. In any
6 organization, for example, your previous
7 employer, JPMC, any policy or policy
8 documents, including, you know, smaller policy
9 documents, even the terms of service, they
10 have to be typically reviewed, approved, and
11 signed off with certain sequelas, like legal,
12 finance, FP&A, CFO office, CEO office, head of
13 departments, you know, pertaining to that
14 policy. Correct me if I'm wrong.

15 Now, to your knowledge, who were
16 the people signing off on these terms of
17 service at Celsius? And if you do not have
18 that information, can you provide that
19 evidence to us?

20 MR. McCARRICK: You can
21 answer.

22 A. My understanding is that the legal
23 team and the regulatory team worked with the
24 product team to update terms of use. I was
25 not part of the approval process. I was not

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2 part of drafting it. So my knowledge, kind
3 of, ends there. I apologize, sir. That's,
4 kind of, what I --

5 Q. No, I appreciate you answering
6 that. But would you know if the prior CFO was
7 signing off on these documents?

8 MR. McCARRICK: Objection to
9 form.

10 You can answer.

11 A. I do not know.

12 Q. Sir, if the -- I'm asking this
13 because the assets being moved from one
14 account to another as it's being able to
15 withdraw, no commission being paid on custody,
16 and all of these things were happening.

17 So obviously there was a -- and
18 asset liability component, which would impact
19 the financial forecasting analysis and
20 whatever, whatnot.

21 So these will come under the
22 purview of at least the review of the CFO or
23 CFO office, and somebody from the CFO office
24 would have signed off on -- signed off on
25 this.

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2 You're saying you weren't there as
3 a CFO then, you haven't signed it and
4 reviewed -- or reviewed, approved, or signed
5 off on any of these terms of uses?

6 MR. McCARRICK: Object to
7 form.

8 You can answer.

9 A. That's what I'm saying.
10 Absolutely. I was not part of this. I did
11 not sign off on it. I do not know what the
12 sign-off process was.

13 Q. Okay. And the same for the taxes
14 as well. Now, as Mr. Crews said as well, I
15 and he are in the same boat. I paid taxes on
16 my assets for three years based on the
17 Celsius-generated 1099 forms.

18 Now, would you know who was
19 signing off on these -- on these taxes or the
20 forms that were generated for the customers?

21 MR. McCARRICK: Object to
22 form. Outside the scope.

23 You can answer.

24 A. My understanding is it's tax
25 compliance reporting. So there's

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2 professionals in the space who understand how
3 to report to the IRS. Certain --

4 Q. But they didn't -- I'm sorry.
5 Please go ahead.

6 A. -- certain kind of activities.
7 And that's, I believe, the tax statements that
8 we went through earlier from Mr. Crews, yes.

9 Q. Now, Mr. Ferraro, you -- one last
10 question. You mentioned you spend majority of
11 your time -- actually, I think you answered
12 this one.

13 MR. KHANUJA: So I'll concede
14 to the next.

15 THE WITNESS: Thank you.

16 MR. KHANUJA: Thank you so
17 much.

18 MR. McCARRICK: All right.

19 Let's take a ten-minute break.

20 There's 47 minutes left on the
21 clock, for those keeping track at
22 home, for the remaining pro se
23 creditors, at which point the
24 deposition will end. So we'll take
25 a ten-minute break. Be back at

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2 3:07.

3 THE VIDEOGRAPHER: The time is
4 2:57 p.m. This concludes Media 5.
5 Off the record.

6 (Recess taken from 2:57 p.m.
7 to 3:15 p.m.)

8 THE VIDEOGRAPHER: The time
9 now is 3:25 p.m. This begins Media
10 6. On the record.

11 MR. McCARRICK: Okay. Just a
12 quick logistical item. Before we
13 return to the pro se creditor phase,
14 our friends from Milbank have one
15 question which won't be counted
16 against the pro se time, of course.

17 And just before we go any
18 further, could -- it looks like
19 there's someone on Zoom, RAR. Could
20 that person just, kind of, identify
21 themselves or their affiliation.

22 MS. ANDERSON RYNDERS:
23 Certainly. I'm Rachel Anderson
24 Rynders, and I'm with the Texas
25 State Securities Board.

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2 MR. McCARRICK: Great. Thanks
3 very much.

4 And with that, we'll turn it
5 over to ...

6 EXAMINATION BY

7 MS. WESTOVER YANEZ:

8 Q. Good afternoon, Mr. Ferraro. My
9 name is Melanie Westover Yanez. I'm an
10 attorney with Milbank and we represent the
11 Series B preferred holders.

12 Do you know what I mean by the
13 "Series B preferred holders"?

14 A. Yes.

15 Q. I just wanted to ask you something
16 to follow up on something you discussed with
17 Mr. Crews earlier. I don't think the record
18 is clear. So I just want to make sure it is.

19 Did you -- let me just ask a
20 background question first. Did you
21 participate in preparing the debtor's amended
22 motion for the stablecoin sale?

23 A. I read through it. I was not an
24 active drafter.

25 Q. Okay. But you didn't object to or

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2 find inaccurate anything that was presented in
3 the motion. Right?

4 A. Not that I'm aware of, no.

5 Q. Is it the debtors' position that
6 under any version of the terms of use, that
7 assets deposited into the earned accounts, the
8 right, title, and interest to those assets
9 were transferred to Celsius?

10 A. Yes.

11 Q. And that's true at the time when
12 the customer-facing business was operating out
13 of the UK from Celsius Network Limited. Is
14 that correct?

15 A. To my understanding, yes.

16 MS. WESTOVER YANEZ: Okay. No
17 further questions at this time.
18 Thank you.

19 MR. McCARRICK: Okay. Great.
20 And now we'll return to the pro se
21 portion. Could the next questioner
22 identify themselves and spell their
23 name.

24 MS. BARSTOW: Hi, I'm Nicole
25 Barstow. N-i-c-o-l-e B-a-r-s-t-o-w,

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2 pro se creditor.

3 MR. McCARRICK: Thanks,
4 Ms. Barstow. You're a little bit
5 fuzzy -- or at least it sounds a
6 little bit like you're under water.

7 If you could just speak very
8 slowly so the court reporter can get
9 it, I think that'd be good.

10 THE VIDEOGRAPHER: Please move
11 closer -- please move closer to your
12 microphone, please. This is the
13 videographer.

14 MS. BARSTOW: Okay. I'm
15 pretty close, so is that good?

16 CERTIFIED STENOGRAPHER:
17 That's good.

18 THE VIDEOGRAPHER: That's
19 better.

20 EXAMINATION BY:

21 MS. BARSTOW:

22 Q. Okay. Does the debtor claim to
23 have full and exclusive, meaning 100 percent
24 ownership and 100 percent title to the earn
25 account assets?

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2 MR. McCARRICK: Object to

3 form.

4 You can answer.

5 A. Yes.

6 Q. Okay. Does the debtor claim to
7 have full and exclusive 100 percent ownership
8 and 100 percent title to the borrow account
9 assets?

10 A. The loan collateral, yes. To my
11 understanding, yes.

12 Q. Does the debtor claim to have a
13 security interest in the borrow program?

14 MR. McCARRICK: Object to
15 form. Outside the scope.

16 You can answer.

17 A. The loan collateral -- the
18 collateral that is backed up by the loan,
19 Celsius holds the title to. And in return for
20 that, they are giving the loan in either
21 stablecoins or dollars to the borrower.

22 Q. Right. But in the terms of use,
23 is there a claim that the debtor has a
24 security interest in the debtors' borrow -- in
25 the debtors' borrow program?

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2 MR. McCARRICK: Same

3 objections. Asked and answered.

4 A. I don't have the loan terms of use
5 in front of me, so it's hard for me to point
6 to any specific thing.

7 Q. Okay. And you said you reviewed
8 Version 6 of the terms of use. Is Version 6
9 the last terms of use that was agreed upon
10 with an actual electronic acceptance, an "I
11 agree" box to check and submit with the
12 amended terms of use?

13 A. I know there was the click route
14 on Version 6. I'm not sure, as Version 7 and
15 Version 8 came out, exactly, you know, what
16 the acceptance was. Obviously in the terms of
17 use, it says clearly unilateral right to
18 change the terms of use. So I think 6 was a
19 clickwrap, and I'm not quite sure about 7 and
20 8.

21 (Stenographer clarification.)

22 Q. You're not sure about 7 and 8, but
23 you're sure that the terms of use 6 was agreed
24 by everybody and there was a "submit," and
25 everybody submitted to continue user?

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2 A. That's my understanding. Yeah,
3 sorry. That's my understanding. And Oren
4 Blonstein will be here tomorrow to walk
5 through all of those details.

6 Q. Okay. Does the particular
7 mentioned, Version 6 terms of use, state your
8 Celsius account allows you to view your
9 balances in connection with the services
10 provided to you by Celsius and -- as the
11 services and conduct certain transactions
12 online?

13 MR. McCARRICK: Object to
14 form. The terms of use aren't in
15 front of him, but you can answer to
16 the best of your memory.

17 A. I don't know specifically. It's
18 not in front of me. I apologize.

19 Q. All these questions relate to
20 statements in the version of terms of use 6
21 that I have read, and all of these statements
22 are on there. But I will just skip through
23 those questions anyway.

24 Did everyone who entered into a
25 contract via Celsius' terms of use have the

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2 requisite financial standing to do so in
3 accordance with the SEC public policy of
4 accredited investor status?

5 MR. McCARRICK: Objection.

6 Outside the scope. Form.

7 You can answer if you can.

8 A. I'm not an expert on securities
9 laws and accreditation, so I don't know.

10 Q. So you're not familiar with what
11 an accredited investor means as an accountant?

12 A. I'm familiar with accredited
13 investor. But I'm not familiar with the -- I
14 don't have the knowledge --

15 Q. Are you familiar --

16 MR. McCARRICK: Hold on.

17 Let --

18 Q. Are you familiar if there are
19 unaccredited investors on Celsius?

20 MR. McCARRICK: Okay. Object
21 to form. Outside the scope.

22 Mr. Ferraro, answer.

23 And if you could just let him
24 finish his answer before the next
25 question, that would be great.

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2 Thank you.

3 A. I understand there are customers
4 that -- that have been accredited on the
5 platform, and I understand there's also
6 customers who were -- who have not been
7 accredited on the platform.

8 Q. Okay. So you're aware that there
9 are unaccredited investors on the platform?

10 MR. McCARRICK: Objection.

11 Outside the scope.

12 You can answer.

13 A. Yes.

14 Q. Okay. Did any party to the
15 debtors propose the estate ever make any
16 statement verbally or in writing that
17 misrepresented the facts or omitted certain
18 information?

19 MR. McCARRICK: Object to
20 form. Contract formation is not at
21 issue here. That was carved out.

22 But you can answer to the
23 extent you're able to.

24 A. As I stated earlier, Ms. Barstow,
25 I am not an active viewer of the AMAs or the

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2 blog posts. During the numerous ones, I was
3 probably out in the fields at my farms in
4 Ecuador.

5 More recently since I've come to
6 work for Celsius, I've had my head down
7 working on a day-to-day basis and I haven't
8 gone back to watch old AMAs or look at blog
9 posts.

10 Q. What is Celsius US Holdings?

11 MR. McCARRICK: Object to
12 form. Outside the scope.

13 You can answer, although I'm
14 not sure I heard the question.

15 A. Can you repeat, please.

16 Q. What is Celsius US Holdings --

17 MR. McCARRICK: Object to
18 form.

19 Q. -- the company Celsius US
20 Holdings?

21 MR. McCARRICK: Object to
22 form. Outside the scope.

23 You can answer.

24 A. I believe you're referring to a
25 legal entity in Celsius.

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2 Q. Yes. What is that? What is that
3 company? What does it do?

4 A. I think it's a --

5 MR. McCARRICK: Object to
6 form.

7 You can answer.

8 A. To my understanding, it's a, kind
9 of, a roll-up that holds certain activities
10 that are done out of the US entities. So it
11 could be lending. It could be DeFi.
12 Different types of deployment activities.

13 Q. So different deployment activities
14 are outside of the US?

15 MR. McCARRICK: Object to
16 form. Outside the scope.

17 You can answer.

18 A. No, no, I said within the US
19 entities. So it's -- so it's entities that
20 hold certain activities that are in the US
21 holding company including things like DeFi, I
22 believe, retail lending, I believe.

23 Q. What is the current market value
24 of Celsius Network LLC, et al.?

25 MR. McCARRICK: Object to

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2 form. Outside the scope.

3 You can answer.

4 A. I don't have that in front of me,
5 and in theory, with the cryptocurrency
6 holdings that Celsius has on its balance
7 sheet, the value changes by the second. But I
8 don't have it in front of me. I'm sorry.

9 Q. What are the investments, stock,
10 et cetera, held by Celsius US Holdings?

11 MR. McCARRICK: Object to
12 form. Outside the scope.

13 You can answer. And then I'll
14 answer the time question that I just
15 saw posted.

16 A. Okay. So I -- sorry, Ms. Barstow.
17 Can you ask the question again. I get
18 confused with all the -- it's been a long day.
19 I'm sorry.

20 Q. What are the investments, stock,
21 et cetera, held by US -- Celsius US Holdings?

22 A. Okay. Thank you. I'm not sure
23 exactly the investments that are in Holdings.
24 My understanding of the investments are there
25 are certain debt and equity type of

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2 investments.

3 There's lending receivables. I
4 believe there's collateral DeFi activities, et
5 cetera. So, I mean, all -- most of -- a lot
6 of the activity is out of the US entities.

7 MR. McCARRICK: And there's --
8 just for the record, there's around
9 30- -- between 37 and 38 minutes
10 left.

11 Q. Okay. Is all of the asset value
12 of Celsius US Holdings fully reported on the
13 debtors' asset liability schedules that is on
14 record with the bankruptcy court?

15 MR. McCARRICK: Object to
16 form. Outside the scope.
17 You can answer.

18 A. Yes, to our best of our abilities,
19 it would include all of the assets and the
20 liabilities of the entity, of course.

21 Q. Of Celsius US Holding as well?

22 A. For --

23 MR. McCARRICK: Same
24 objections.

25 You can answer.

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2 A. For any of the entities within
3 Celsius.

4 Q. Is it true that Celsius Network
5 only has 3 million of USDC assets and 25,000
6 of GUSD assets in the different -- accounts
7 receivable?

8 MR. McCARRICK: Same
9 objections.

10 You can answer.

11 A. I don't have it in front of me,
12 but it should be included in monthly operating
13 reports and other schedules that we file with
14 the court.

15 Q. What date were the debtors
16 insolvent in regards to the nonalgorithm
17 stablecoin assets?

18 (Stenographer clarification.)

19 MR. McCARRICK: Objection to
20 form. Outside the scope.

21 You can answer to the extent
22 that you're able or no.

23 A. I can't -- I'm sorry, I can't -- I
24 can't hear. I couldn't make it out.

25 Q. What date were the debtors

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2 insolvent in regards to the nonalgorithm
3 stablecoin assets?

4 MR. McCARRICK: Same
5 objections.

6 You can answer to the extent
7 that that you're able or no.

8 A. I'm sorry, I don't understand the
9 question.

10 Q. What dates were the debtors
11 insolvent that you're aware of? When were the
12 debtors aware that they were insolvent?

13 MR. McCARRICK: This question
14 has been asked at least two or three
15 times today. But you can answer it
16 again, Mr. Ferraro.

17 A. Yeah, I wasn't part of the
18 decisions for the pause that the board made,
19 but that's -- that's in my opinion, when we
20 stopped being a going concern.

21 We had paused operations, all
22 activities, and then about a month later we
23 filed for bankruptcy. So I go back to the
24 pause date.

25 Q. Was the debtor paying stablecoin

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2 customers' earn account withdrawals using new
3 funds that were deposited into the earn
4 program?

5 A. I think, you know, the way we
6 managed the balance sheet is the coins are
7 fungible. They're, you know, property of
8 Celsius so we try to manage the risk
9 positions, meaning we don't take directional,
10 kind of, positions with regards to any
11 cryptocurrencies.

12 So I think -- I think at the --
13 you know, we were always, in a fungible way,
14 using Bitcoin to pledge. We were always using
15 stablecoins for operations. If institutions
16 wanted to borrow ETH, we would lend them ETH.
17 Right? So coins -- coins are fungible across
18 all deployment activities.

19 Q. But back to my question: Did the
20 debtors use earn withdrawals to fund -- I
21 mean, did the debtors honor earn account
22 withdrawals using the new funds deposited in
23 the earn program?

24 MR. McCARRICK: Objection to
25 form. Outside the scope.

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2 You can answer.

3 A. We -- we -- like I said, the
4 balance sheet, the way we operate the business
5 is using fungibility -- right? -- we optimize
6 across the balance sheet.

7 We had raised Series A, we had
8 raised Series B. We had an ICO. So at the
9 end of the day, you know, we raised capital,
10 so there was lots of different sources in
11 which we could pay reward rates out, if I'm
12 understanding your question appropriately.

13 CERTIFIED STENOGRAPHER:

14 Somebody has to turn their audio
15 off.

16 THE VIDEOGRAPHER: Somebody
17 has the mic open.

18 CERTIFIED STENOGRAPHER:

19 There's an echo.

20 A. Coins are fungible. We would --

21 Q. -- that answer, but I'll move on.

22 Did the debtor ever have any
23 profits to pay its staff and executive
24 management team salaries from?

25 A. I believe you said "did the

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2 debtors have profits to pay management

3 salaries?" Was that the question?

4 Q. Yes, did the debtors ever have any
5 profits to pay the salaries from --

6 MR. McCARRICK: Objection.

7 Outside the --

8 Q. -- rather than deposit --

9 MR. McCARRICK: Objection.

10 Outside the scope.

11 You can answer.

12 A. Like I said, the balance sheet was
13 fungible. Through the equity raises, we did
14 have significant amount of yield and revenue
15 in order to pay out rewards -- rewards as well
16 as the operational cost.

17 So we had money -- we had revenue
18 come -- we had revenue coming in that was
19 allowing us -- as well as raises, capital
20 raises, that were allowing us to operate.

21 The company -- from my standpoint,
22 the company was positioned for growth really
23 up until when I joined. So, you know, we were
24 growing and you know, we had done two equity
25 raises.

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2 So the resources were fungible
3 across the balance sheet, whether it was
4 stablecoins or whether it was BTC or whether
5 it was capital infusion Series A and B.

6 Q. Did the debtors believe that
7 having title and ownership of the loan within
8 the Celsius account means that there are no
9 Celsius customers, creditors that had secured
10 claims against Celsius security interest?

11 (Stenographer clarification.)

12 MR. McCARRICK: Objection to
13 form. Calls for a legal conclusion.
14 You can answer.

15 A. Not to my knowledge that there's
16 any secured claims.

17 Q. Did Celsius ever refer to its
18 creditors as "customers" verbally or in
19 writing? I know I heard you use the word
20 "customers" to refer to us, as a matter of
21 fact, a few times within this testimony.

22 MR. McCARRICK: Objection to
23 form.

24 You can answer.

25 A. I think of the customers as

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2 customers of Celsius. And I also think of
3 the, largely, the customers as the creditors
4 of Celsius.

5 So they are slightly different but
6 also very similar. Most of our customers are
7 also creditors and most of our creditors are
8 customers.

9 MR. McCARRICK: Just a time
10 update, 30 minutes left on the pro
11 se portion.

12 Q. Why is Celsius requesting to turn
13 Bitcoin and USD coin to cash after repaying
14 the DeFi loan and giving back the collateral?

15 MR. McCARRICK: Objection to
16 form.

17 I couldn't understand the
18 question, if you could repeat it.

19 Q. Why is Celsius requesting to turn
20 Bitcoin and USD coin to cash after repaying
21 the DeFi loan and getting back the collateral?
22 Celsius has a motion to repay a DeFi loan is
23 that the Bitcoin and USD coin --

24 A. Yes.

25 Q. -- and why turn that into cash --

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2 why do they want to turn the collateral into
3 cash?

4 MR. McCARRICK: Objection to
5 form.

6 You can answer.

7 A. I think I understand what you're
8 talking about. I believe this is the notional
9 DeFi loan. You know, we think that DeFi for a
10 very small amount of loan that is highly
11 over-collateralized, we think it's probably
12 better for the estate to pay off the loan and
13 bring the collateral back.

14 MR. McCARRICK: Let's go off
15 the record.

16 THE VIDEOGRAPHER: The time is
17 3:35 p.m. This concludes Media 6.
18 Off the record.

19 (Recess taken from 3:35 p.m.
20 to a owe a 3:49 p.m.)

21 THE VIDEOGRAPHER: The time
22 now is 3:49 p.m. This begins Media
23 7. On the record.

24 MR. McCARRICK: Okay. We are
25 going to go the full seven hours if

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2 that's what people feel the need to
3 do. I would note that most of this
4 deposition has been outside of the
5 scope of what the committee agreed
6 to.

7 In their filing last night at
8 ECF 1412, paragraph 1, they stated:

9 "The debtors and the committee
10 made two agreements: (1) defenses
11 to the formation of a contract with
12 respect to all account holders who
13 transferred cryptocurrency to the
14 debtors, such as fraud, mistake, and
15 misrepresentation, would be fully
16 reserved and would not be tried at
17 this time."

18 That's been the lion's share
19 of this deposition today. I would
20 ask that people try to hew to that
21 agreement going forward. We do
22 want, kind of, the pro se creditors
23 to be heard, particularly those who
24 have stayed here throughout the day.

25 But I would, I guess, commend

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2 or encourage you not to feel the
3 need to use every single second of
4 the deposition on issues that will
5 be tried at some point. The
6 question isn't whether or not there
7 is going to be discovery into some
8 of these defenses or individualized
9 defenses, the question really is
10 just when.

11 So with that we can keep
12 rolling. But it's up to you guys to
13 divide the rest of the, kind of,
14 allocation, all right, the kind of
15 time allocation. You guys need to,
16 you know, kind of, do that
17 yourselves. And when we're, kind
18 of, at seven, we're at seven.

19 BY MS. BARSTOW:

20 Q. Okay. I just have -- I'm just
21 going to wrap up a few more questions, a
22 couple more of the most important ones that I
23 want to ask and that is: For the unaccredited
24 investors that were not in the custody states,
25 are those individuals considered in the

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2 withhold account or still in the earn account?

3 MR. McCARRICK: Objection.

4 Outside the scope.

5 You can answer.

6 A. Are the customers -- can you,
7 Nicole, Ms. Barstow can you say it one more
8 time, I'm sorry.

9 Q. The customer earn accounts that
10 are not in the states that allow custody
11 accounts, are those accounts still considered
12 earn accounts or are they withhold accounts?

13 A. For new deposits after the --

14 Q. Not new deposits, no. Not new
15 deposits. No, for deposits that are prior to
16 the Version 8 terms of use?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. I think I testified earlier that
21 they were in the earn account and that they
22 stayed in the earn account. But if there was
23 new deposits that occurred in a noncustody
24 state, the new deposits would go to withheld.
25 That's my understanding.

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2 Q. My final question would be: Did
3 retail and institutional borrowers pledge
4 collateral in order to get loans from Celsius?

5 A. In retail and most institutional,
6 there was some institutional clients that took
7 out unsecured loans.

8 Q. What about for retail?

9 A. Yeah, I said for retail and most
10 of institutional.

11 Q. Okay. And most of institutional
12 loans were also pledging collateral as well?

13 MR. McCARRICK: Objection.

14 Outside the scope.

15 A. Yeah, that's what I said, yes.

16 MS. BARSTOW: Well, this is
17 related to the scope because it has
18 to do with whether or not those
19 assets belong to the estate,
20 because, yeah, for a specific
21 reason. But -- okay. That's all my
22 questions. Thank you.

23 THE WITNESS: Thank you.

24 MR. McCARRICK: All right.

25 Next -- next up to bat, if you could

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2 state and spell your name before you
3 start questioning.

4 MR. HERRMANN: Hello,

5 Mr. Ferraro. I am Immanuel

6 Herrmann, pro se creditor.

7 I-m-m-a-n-u-e-l H-e-r-r-m-a-n-n.

8 MR. McCARRICK: Great.

9 Thanks, Mr. Herrmann. I just want
10 to tell you, your connection seemed
11 a little bit shaky or choppy, so
12 there may come a point where you
13 need to, kind of, reconnect. So
14 just make sure you're asking your
15 questions slowly so the connection,
16 kind of, stays stable or whatever.

17 MR. HERRMANN: Okay. Great.

18 I'll do my best to speak very
19 clearly. Also, hello, this is my
20 first deposition, so I'll try my
21 best to do it in order and its not
22 just yours, so ...

23 EXAMINATION BY

24 MR. HERRMANN:

25 Q. So actually, my first question,

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2 Mr. Ferraro, is actually about -- it is a
3 terms of service question, actually.

4 I'm wondering, are you familiar
5 with the September 29, 2022, terms of service
6 update that's posted on the Celsius website?

7 A. Not specifically.

8 Q. Are you aware that the terms of
9 use were updated post-petition on
10 September 29, 2022?

11 MR. McCARRICK: Object to
12 form.

13 You can answer.

14 A. I haven't studied those, no.

15 Q. Okay. I'm raising this issue
16 because some of us discovered -- I don't
17 believe we received any notice about it,
18 however, there have been -- I believe Cam
19 Crews, who spoke to you earlier, compared this
20 terms of use to others and that material
21 changes have been made.

22 So you're not aware of any changes
23 post-petition and you did not approve changes
24 post-petition?

25 MR. McCARRICK: Object to

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2 form.

3 You can answer.

4 A. Yeah, I'm a little bit confused in
5 the conversation, honestly, I'm not aware.

6 Q. Okay. I mean, I could share, but
7 I think in the interest of time, I'll just
8 state here that if you go to the website and
9 you just look at the current terms of use, it
10 says "September 29, 2022," and that they are
11 not the same as the last version that's filed
12 in the declaration of Alex Mashinsky.

13 And so I don't believe they're in
14 the docket, but I think we could just say this
15 is a matter for follow-up and I don't need to
16 ask you further questions on it, but I will
17 follow up with T.J. about it, if that's all
18 right.

19 A. Yeah, like I said, I'm not quite
20 following, so I apologize, but yeah.

21 Q. No, just to be clear, I mean, what
22 it really is, is there's a new terms of use,
23 if you just go to the website, that's not
24 identical to what was there before.

25 A. Okay.

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2 MR. McCARRICK: Object to
3 form. You can -- yeah, I think you
4 were just making a statement. So
5 okay got it.

6 MR. HERRMANN: I mean that was
7 just a statement. You don't need to
8 answer.

9 Q. So I guess another question I have
10 is just related to your conversations with
11 creditors.

12 Earlier in the deposition, the UCC
13 had asked if you spoke with retail investors
14 yourself. And you had said that you spoke
15 with members of the UCC, including the
16 co-chairs. Is that correct?

17 A. Yes, sir, yes.

18 Q. Great. So I'm told -- I, like
19 you, am not a bankruptcy lawyer, however, I am
20 told that in restructurings, it's often
21 typical to speak with creditor groups and to
22 resolve some of the types of problems we are
23 having with property issues, for example, by
24 working it out and making deals among the
25 groups.

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2 Is that something that would
3 interest you, speaking with creditors from
4 earn and loans and trying to mediate some of
5 these groups to get us out of Chapter 11 more
6 quickly?

7 MR. McCARRICK: Object to
8 form. Outside the scope.

9 But you can answer.

10 A. As long as it's within the code
11 and it maximizes value for the estate, no
12 stone is left unturned, absolutely.

13 Q. As far as I understand, it's all
14 doable within the code, Mr. Ferraro. There
15 may, however, be issues around some of the
16 agreements that require extreme secrecy that,
17 you know, with bidders, or just who's allowed,
18 what we're allowed to talk about.

19 So, you know, I know that we --
20 Celsius in general has talked about
21 transparency. But are you willing to consider
22 opening up conversations about the reorg with
23 more groups of customers?

24 MR. McCARRICK: Object to
25 form. Well outside the scope.

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2 You can answer.

3 A. I would love to. My understanding
4 is that we need to get to a disclosure
5 statement before we can market the plan. We
6 are working actively on the reorganization
7 plan. And I tremendously look forward to
8 being able to discuss it with all of the
9 stakeholders, absolutely, Mr. Herrmann.

10 Q. All right. Thank you. Well, I
11 would just encourage you, you know, remind
12 you -- I mean, I guess, one question is: Does
13 Kirkland work for you? Like, who do they
14 actually report to? Who's, like, the big boss
15 at ...

16 MR. McCARRICK: Object to
17 form. I don't think anyone knows
18 the answer to that question.

19 You can answer.

20 A. Yeah, my understanding is that
21 Kirkland is legal advisors to the company
22 engaged through the special committee of the
23 board. So I work -- I work closely with them.
24 They do not represent me personally.

25 Q. Yeah, I wasn't actually implying

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2 that. I know you've gotten questions on that
3 line before. I was more just stating that,
4 you know, I think that there may be certain
5 requirements, but that requirements can be
6 waived by the debtor.

7 And so there's just questions
8 about, you know, I'm not actually sure -- for
9 example, let's talk about exclusivity for a
10 moment.

11 I think part of the issue here is
12 that because of exclusivity, we can't talk
13 about -- you may have to put forward a plan
14 first.

15 So who made the decision to extend
16 exclusivity?

17 MR. McCARRICK: Objection to
18 form. Well outside the scope.

19 You can answer.

20 A. My understanding is that that's a
21 special committee decision, a decision in
22 which I support. We're actively working on a
23 plan. That would be very difficult to work on
24 multiple plans at the same time.

25 We do listen to the community.

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2 And we are trying to, kind of, take the best
3 ideas and bring them forth in a reorganization
4 plan that will, you know, provide as much
5 value back to the customers and the creditors
6 as we possibly can.

7 Q. Okay. Well, I would just
8 encourage you, again, to consider leaving no
9 stone unturned, as you said, and really
10 explore your options with the special
11 committee and with Kirkland.

12 And you know, one last question I
13 have for you in this area is: Would you be
14 willing to meet with groups of creditors from
15 loans and earn -- you or a designee from
16 Celsius -- regularly?

17 MR. McCARRICK: Object to
18 form.

19 You can answer.

20 A. I would love to. And I will
21 follow up with my legal advisors on what the
22 art of the possible is here.

23 Q. Okay. Thank you. So now I'm
24 going to move on to some different kinds of
25 questions. I'm sorry if I'm a bit out of

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2 order. But I just had a lot of people ask
3 things that I tried to get through.

4 So one question is about the
5 bidding, on how many viable bids would you say
6 that you have right now?

7 MR. McCARRICK: Object to
8 form. Outside the scope.

9 You can answer.

10 A. I'm not going to discuss about the
11 sales and marketing process and the number of
12 bidders. I don't think that would be helpful
13 to the estate.

14 MR. McCARRICK: And can I
15 just -- are those subject to NDAs?

16 THE WITNESS: In the overall
17 practice -- is NDA, yes, of course.

18 MR. McCARRICK: Okay. Then
19 I'm going to instruct you not to
20 breach any NDA or NDA, nondisclosure
21 agreement, in response to any of
22 these questions.

23 You can continue to ask.

24 MR. HERRMANN: Okay. So for
25 the record, you're directing your

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2 client not to answer?

3 MR. McCARRICK: Correct. I'm
4 not going to instruct him to violate
5 an NDA, no.

6 BY MR. HERRMANN:

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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[REDACTED]

Q. Thank you. So, yeah, I mean, one
reason I encourage you to talk to the

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2 different credit groups is, for example, earn
3 and loans have been in very close
4 conversation, and just as an example, you
5 know, the loans people -- I mean, look, this
6 is nothing binding here -- but you know,
7 they're willing to talk about increasing
8 interest rates and lengthening term. We
9 haven't quite figured out how to deal with
10 haircuts, for example.

11 And then on the earn side, some
12 potential bidders that we've talked to have
13 been willing to do all sorts of things. For
14 example, converting earn deposits into loans
15 or other creative ideas or, you know, giving
16 incentives to lock up funds, but that's more
17 complicated --

18 CERTIFIED STENOGRAPHER: We
19 lost you there, Mr. Herrmann.

20 MR. HERRMANN: What do I need
21 to repeat?

22 CERTIFIED STENOGRAPHER: I'll
23 repeat the last thing.

24 (Record read.)

25 Q. Okay. Yeah, I kind of lost my

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2 train of thought. I'm sorry.

3 I would just encourage you -- I'll
4 just restate it from the beginning.

5 I would just say that basically
6 loans, you know, the earn has been talking to
7 loans. We talked about increasing interest
8 rates, lengthening terms, and then on the earn
9 side, we talked about could we convert them
10 into loans or something that increases the
11 value of the loan, these sorts of ideas.

12 These are the kinds of
13 conversations that are happening. I'm sure
14 the UCC has brought some of these ideas to
15 you. This is just one reason I was
16 encouraging you to talk to creditors. And I
17 think I can just leave it at that. Hopefully,
18 you got all of that, and I'll ask the next
19 question.

20 The next question is actually on
21 clawbacks. Do you support insider clawbacks
22 for people who withdrew in the one-year period
23 prior to the petition date?

24 MR. McCARRICK: Objection to
25 form. Wildly outside the scope.

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2 You can answer.

3 A. The clawbacks are not in my lane.

4 I don't -- I don't have a say in the

5 clawbacks. That's, you know, with the special

6 committee and through the bankruptcy process.

7 So I -- it's not -- it's not something that I

8 focus on.

9 I'm a guy who believes in fairness

10 and following the rules of the law. So

11 whatever the outcome of that is is the

12 outcome. And if it brings money back to the

13 estate, it brings money back to the estate.

14 But that's something that's not on my agenda,

15 not in my lane, and not in my control.

16 Q. All right. Will you set an

17 example by not using estate resources to fight

18 against insider clawbacks and encourage other

19 executives to not fight, to not aggressively

20 fight back against clawbacks?

21 MR. McCARRICK: Object to

22 form. I'm not sure what the

23 question there was.

24 Could you rephrase?

25 MR. HERRMANN: Sure.

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2 Q. Will you set an example by not
3 using estate resources, i.e., not paying
4 Kirkland & Ellis to fight insider clawbacks?

5 MR. McCARRICK: Object to
6 form. Outside the scope.

7 You can answer.

8 A. I'm not pushing against clawbacks
9 at all. I'm not actively working against
10 clawbacks. I can't promise you, Mr. Herrmann,
11 that the activities of the special committee
12 and other stakeholders won't look into this.
13 My belief is they will make the right
14 decision.

15 But I can give you my word that I
16 will not be pushing back against clawing back
17 value for the estate in any means. My job is
18 to maximize value for the estate and to bring
19 money into the estate.

20 Q. All right. So now I have some
21 questions about Alex Mashinsky.

22 Can you describe Alex Mashinsky's
23 current role of the company as chairman of the
24 UK company?

25 MR. McCARRICK: Object to

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2 form. Outside the scope.

3 You can answer.

4 A. My understanding is he has no
5 interaction with the company whatsoever. I
6 have not spoken to Alex Mashinsky since the
7 resignation. I have not engaged with him as
8 the board. To my understanding, the full
9 board has not met, only the special committee
10 is holding session.

11 So from my vantage point, Alex
12 Mashinsky is nowhere to be seen in any of the
13 business or governance of what's happening.
14 The only time I hear from Alex Mashinsky is
15 when I see a tweet.

16 Q. Okay. Is he receiving any
17 compensation currently from Celsius?

18 A. To my knowledge, nothing. He went
19 off of the payroll in September, and there is
20 no other compensation being paid.

21 Q. All right. Another terms of use
22 question that we will move on to: Are you
23 familiar with the best commercial and
24 operational efforts language in the terms of
25 use?

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2 A. Not specifically.

3 Q. The terms of use recent versions,
4 including the ones that you reviewed
5 carefully, I believe 7 and 8 -- 6, 7, and 8
6 are the ones that you said that you reviewed.
7 Yes?

8 A. Yeah. But I didn't memorize every
9 word, and I do not have it in front of me. So
10 I need a little help.

11 Q. Sure. I can try to find the exact
12 clause. It says "best commercial and
13 operational efforts." Let me see if I can
14 find it. Yes. Okay. So I can read it to you
15 here. It says:

16 "We may lend, sell, pledge,
17 hypothecate, assign, invest, use,
18 commingle, or otherwise dispose of
19 assets and eligible digital assets
20 that are not held in a custody
21 wallet, if available to you, to
22 counterparties, or hold the eligible
23 digital assets with counterparties.
24 And we will use our best commercial
25 and operational efforts to prevent

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2 losses."

3 A. Yeah. Yeah.

4 Q. When was the first time that you
5 became familiar with this language?

6 A. In preparation for this, in
7 signing the declarations, and reviewing
8 things. So -- and --

9 Q. Understood. So as chief financial
10 officer, you were not aware that you were
11 required to use best commercial and
12 operational efforts to prevent losses?

13 MR. McCARRICK: Object to
14 form.

15 Q. And what that meant? You were
16 never advised --

17 A. From my --

18 Q. You were never advised about that?

19 MR. McCARRICK: Object to
20 form. Outside the scope.

21 You can answer.

22 A. From my understanding, that's what
23 we do. We might have not been perfect, but
24 that is what we attempted to do, best business
25 operational, kind of, processes, strategic

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2 thinking, et cetera.

3 So I don't think that -- I don't
4 think that there's anything, since I joined
5 March 21, 2022, that I've done otherwise other
6 than what that clause states.

7 Q. I mean, there's a lot of missing
8 Bitcoin. So was that best commercial -- was
9 that -- was that best efforts to preserve
10 depositor property?

11 MR. McCARRICK: Obj- --

12 Q. Whatever happens --

13 MR. McCARRICK: Okay. Object
14 -- object to form.

15 You can answer.

16 A. There's unfortunate events
17 occurred. Some of them in 2020, some of them
18 in 2021, and some of them in 2022. They're
19 unfortunate.

20 I would say the front-to-back,
21 kind of, understanding of risk in this
22 industry, it's a nascent industry, clearly was
23 not adequate, the measurement and
24 understanding of risk. I think that's
25 industry-wide. Did Celsius fail in its

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2 attempts? Yes. Did it attempt? Absolutely.

3 Q. All right. How is a signature
4 recorded, an individual -- and this maybe is
5 better for tomorrow if you are not the person
6 for this.

7 How is an individual signature
8 recorded?

9 A. I think --

10 Q. -- by --

11 A. Yeah. I think it's best for
12 tomorrow.

13 Q. All right. So I have some
14 tax -- following up on some of the tax
15 questions, we covered your users treatment of,
16 you know, the 1099s, Cam Crews covered that.

17 I have some follow-up questions
18 about how Celsius treated certain, you know,
19 whatever you want to call it, you know, when
20 you -- when you receive the funds from users,
21 let's say.

22 Did Celsius consider -- on
23 Celsius' tax returns, did it claim that it
24 owned earn deposits?

25 A. I'm sorry. Does -- on

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2 Celsius' -- any deployment?

3 Q. Audits -- let's just say --
4 okay -- let's -- I'll restate.

5 Did Celsius in its books and
6 records -- let's start with the books and
7 records. Celsius in its books and records
8 reflect earn deposits as its property?

9 A. Consistent with the terms in
10 use -- consistent with the terms in use, the
11 user coins that are put on the platform are --
12 not in the custody, in the earned product, are
13 a liability on the balance sheet.

14 We have a contractual IOU between
15 Celsius and the customer. We represent that
16 as an asset of Celsius, the coin, and an
17 obligation or liability to the customer.

18 So, yes, earn deposits, earn
19 placements are considered to be a liability on
20 the balance sheet.

21 Q. Okay. And then when Celsius
22 would -- because you say that title was
23 transferred -- you were doing things like
24 discretionary trading -- although that was
25 never marketed, but we know that that was

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2 happening.

3 So when those sort of events
4 happened, did Celsius record that as -- in
5 other words, you took possession of the coins
6 and then you had to pay taxes on it, you were
7 trading it. It was your property?

8 MR. McCARRICK: Mr. Herrmann,
9 you broke up in the middle of your
10 question there. Could you re-ask
11 it?

12 MR. HERRMANN: Yes.

13 Q. When you traded coins, for
14 example, like you sold coins, was that treated
15 as Celsius' property? You were paying taxes
16 on it?

17 MR. McCARRICK: Object to
18 form. Outside the scope.

19 You can answer.

20 A. To my understanding, yes. Those
21 are all taxable events for the company. The
22 coins are on our balance sheet, we have title
23 to them. If we trade them and take gains or
24 losses versus the basis, those flow through to
25 taxable income or loss.

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2 Q. Great. And then for your taxes
3 themselves, did you record gains and losses
4 based on those trades?

5 MR. McCARRICK: Object to
6 form. Outside the scope.

7 You can answer if you know.

8 A. I think that's what I just
9 answered -- right? -- was that --

10 Q. Yeah, I think we were talking
11 about books and records. So I was just
12 clarifying that that's what rooted to the
13 company's tax return.

14 A. Yeah, that would flow through the
15 company's tax return.

16 Q. Thank you. What is -- what is
17 a lo- -- so earn deposits were loans to
18 Celsius. Correct?

19 MR. McCARRICK: Object to
20 form.

21 You can answer.

22 A. Yes.

23 Q. How can you loan something and
24 also give up all rights and title?

25 MR. McCARRICK: Object to

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2 form. Asked and answered.

3 You can answer again.

4 A. It's transferred title and we have
5 an obligation to return the coin to you in
6 normal course.

7 Q. So it's something like an ETN or
8 something like that?

9 A. I would say --

10 MR. McCARRICK: Object to
11 form.

12 You can answer.

13 A. I would say just very clearly, the
14 customers place the coins in the earn program.
15 They are transferring title and ownership to
16 Celsius. Celsius has an obligation to return
17 that coin in kind back to the customer in
18 normal course.

19 That's the terms in use. That's
20 the way we record it on the balance sheet.
21 That's the way we manage the business.

22 Q. All right. I guess, going back to
23 the commercial best efforts, you know,
24 reasonable best efforts, I guess that's where
25 people may beg to differ about whether those

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2 efforts were taken.

3 In your view, was -- was -- you
4 know, you talked about some unfortunate events
5 that took place. Do you think that those
6 actions were appropriate within the industry?

7 MR. McCARRICK: Object to
8 form. Outside the scope. Also just
9 vague as to "actions."

10 But you can answer to the
11 extent you understand the question.

12 A. I mean, we're in the lending
13 business, and in DeFi we did some centralized,
14 kind of, trading. I think that's pretty
15 similar to what other similar platform players
16 were doing to Celsius.

17 Q. All right. Well, maybe the
18 industry needs to have better risk management
19 because it's pretty ...

20 CERTIFIED STENOGRAPHER: We
21 lost you again, Mr. Herrmann.

22 Q. -- but I think that might, given
23 the amount of missing funds.

24 Does Celsius have net operating
25 losses on its balance sheet?

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2 MR. McCARRICK: Object to

3 form. Outside the scope.

4 You can answer.

5 A. There are net operating losses on
6 the balance sheet, yes.

7 Q. Is there a way that those losses
8 can accrue to the benefit of creditors?

9 MR. McCARRICK: Object to
10 form. Outside the scope.

11 You can answer to the extent
12 you understand it.

13 A. I'm not a tax advisor or an
14 expert. I know we've had conversations around
15 this base. I think it comes down to a legal
16 discussion about changing control and the
17 ability to carry forward NOLs. But that's --
18 that's, kind of, the sum total of my knowledge
19 on the topic.

20 I know we looked into it. There's
21 a lot of value there, but I think it's
22 difficult according to the IRS code. My
23 understanding would change in control.

24 MR. HERRMANN: Okay. I just
25 need a minute to go through

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2 questions here to find some, but ...

3 Q. How often would you say you speak
4 with the special committee?

5 MR. McCARRICK: Object to
6 form. Outside the scope.

7 You can answer.

8 A. Regularly.

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

Q. Understood. So just going back to
taxes for a second. It sounds like the
company did treat digital assets corresponding
to balances and earn accounts differently from
digital aspects -- assets corresponding to
balances and custody accounts.

Is that correct?

MR. McCARRICK: Objection.

Outside the scope in multiple ways.

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2 You can answer to the extent
3 you know.

4 A. Yeah, my understanding is that
5 it's different. One is an asset of the
6 company vis-a-vis earn that can be deployed,
7 rehypothecated, lent out, otherwise invested,
8 or sold. And the other is custody, title
9 remains with the customer, segregated in a
10 custody workspace, not to be deployed.

11 Q. All right. Can you tell me the
12 first time you talked about grandfathering in
13 nonaccredited US investors to earn?

14 MR. McCARRICK: Object to
15 form. Outside the scope.

16 You can answer. And you may
17 have answered this actually already
18 today, but you can answer again.

19 A. The first time I talked about
20 accredited and nonaccredited investors with
21 earn?

22 Q. Grandfathering specifically.

23 A. I wasn't part of --

24 Q. Grandfathering them in.

25 A. I wasn't part of those discussions

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2 or decisions.

3 Q. Okay. When -- in your opinion,
4 are the terms of use clear and unambiguous?

5 A. In my opinion, 100 percent clear
6 and -ambiguous.

7 Q. Are they clear and unambiguous
8 about what happens when a nonaccredited US
9 investor, after April 15, pays off a loan?
10 Are they clear and unambiguous about what
11 happens?

12 MR. McCARRICK: Object to
13 form.

14 You can answer.

15 A. Before the freeze or after the
16 freeze? Are you talking normal course or --

17 Q. Let's say before the freeze. It's
18 May 15, 2022. A nonaccredited US investor
19 pays off a loan. Their collateral is placed
20 in earn.

21 Do you believe that the contract
22 is clear and unambiguous, the loan and the
23 earn contracts, and that the relationships
24 between the two contracts are clear and
25 unambiguous, and that if completely clear from

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2 reading those contracts, that the collateral
3 should be placed in earn?

4 MR. McCARRICK: Object to
5 form. You can answer to the extent
6 you understand or know.

7 A. I think title has been transferred
8 to Celsius in the earn program. If a customer
9 then wants to use that collateral in the
10 lending program, title is going to remain with
11 Celsius.

12 And if it goes back to the earn
13 program and the customer chose to stay in the
14 earn program, the asset would be deployed.
15 Celsius would use its balance sheet to
16 maximize from a risk-based standpoint the
17 yield in order to pay rewards back to the
18 customers.

19 Q. Have you read the loan agreements,
20 Mr. Ferraro?

21 A. I believe I've cursory reviewed
22 them but not in detail.

23 Q. I would encourage you to do so,
24 and in particular, the section that says,
25 coins that are deposited, that the customer

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2 has sole title to the coins.

3 MR. McCARRICK: Object to
4 form.

5 Q. Are you familiar with that
6 language? Are you familiar that the loan
7 agreement has language that coins deposited,
8 that the customer has sole title to the coins?

9 MR. McCARRICK: Object to the
10 form.

11 A. Sir, it's not in front of me. So
12 I can't -- I'm under -- giving testimony under
13 oath. I don't have it in front of me. It
14 doesn't -- you know, we'd have to go through
15 the specifics.

16 MR. HERRMANN: How much time
17 do we have left overall? I just
18 want to be sensitive to not taking
19 up too much of the creditors' time
20 here.

21 MR. McCARRICK: I'll defer to
22 the videographer.

23 MS. BARSTOW: Object to form.

24 THE VIDEOGRAPHER: About an
25 hour and 55.

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2 MR. McCARRICK: About an hour
3 55 left, it sounds like.

4 And Ms. Barstow, could you go
5 on mute.

6 MS. BARSTOW: Whoops.

7 MR. HERRMANN: All right.

8 Then I think I will see if I can try
9 to find this line of language.

10 Q. But I think it may be hard,
11 Mr. Ferraro, in this deposition with me, sort
12 of, just reading it to you, if you're not
13 familiar with the contracts, it might take
14 quite a long time to have you read it through
15 and, sort of, figure out the re- -- I'll save
16 this for another day.

17 A. Yeah.

18 Q. But there is language. I would
19 just state here that I would encourage you to
20 prepare for this, because there is language
21 that customers have sole title.

22 MR. HERRMANN: So I would --
23 you know, I will state for the
24 record that I object to the
25 supposition that the contracts are

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2 plain and unambiguous, especially
3 the relationship between the
4 contracts, but the contracts in
5 general.

6 Q. So I do have a follow-up question,
7 actually, that you can answer.

8 After April 14, when a loan
9 extended under the borrow program was repaid
10 or liquidated, how did Celsius determine
11 whether the collateral securing such a loan
12 would be placed in an earn account or a
13 custody account?

14 MR. McCARRICK: Object to
15 form. Outside the scope.

16 You can answer.

17 A. Tomorrow Oren Blonstein will be
18 here. He's an expert in this space. My
19 understanding is when the loan was paid off or
20 liquidated, any remaining collateral, post the
21 custody launch in the US, any of the remaining
22 collateral went back to the custody account
23 for the nonaccredited.

24 Obviously, if you were accredited,
25 there was no custody account and it would have

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2 gone to earn.

3 Q. Okay. That's incorrect because
4 I'm a nonaccredited US customer whose
5 collateral was placed into earn after
6 April 15. So I can talk tomorrow with Oren
7 about that.

8 A. Perfect. Thank you, sir.

9 Q. So I'm not going to -- no need to
10 ask you another question about it, unless you
11 want to correct something.

12 A. I don't have anything in front of
13 me to correct it with. I apologize.

14 Q. That's fine. That's just -- so
15 you're aware, there are nonaccredited US
16 investors who had their collateral placed in
17 earn after April 15.

18 MR. McCARRICK: Object to
19 form.

20 Q. Okay. I have a follow-up
21 question. Now that you're aware of that, do
22 you believe the contracts are clear and
23 unambiguous for that specific situation?

24 A. In my --

25 MR. McCARRICK: No. Object to

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2 form. Mischaracterizes.

3 You can answer.

4 A. In my preparation, I -- I studied
5 the terms of use related to the earn product
6 and the custody offering in 8. That's
7 consistent with my declaration and my
8 deposition.

9 Tomorrow, Oren will be here to
10 further discuss this, Mr. Herrmann.

11 Q. All right. Has Celsius removed,
12 edited, or altered content or videos on or
13 from its application, website, Twitter
14 account, YouTube account, Medium account, or
15 other Internet space since March 1, 2022?

16 MR. McCARRICK: Objection to
17 the form. This is specifically
18 carved out, these kind of formation
19 defenses, defenses related to fraud
20 and misrepresentation and the like.

21 You can respond to the extent
22 you know. I think you've answered
23 the question about these kind of
24 statements multiple times today, but
25 please answer it again.

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2 A. Sir, I had no part in editing,
3 putting up videos. I was never part of an
4 AMA. I'm not in marketing. I'm a, kind of,
5 finance guy who tries to, you know, run a
6 business effectively. I can't speak to any of
7 these edits or anything like that.

8 I had no first-hand knowledge of
9 the process or what occurred, what was edited,
10 or if it was edited or not.

11 BY MR. HERRMANN:

12 Q. Who at Celsius approved this,
13 noting that you were in a senior leadership
14 position while all these things were approved?

15 MR. McCARRICK: Object to
16 form. Outside the scope.

17 A. I became the CFO on July 13, 2022,
18 and in my capacity as CFO and as my capacity
19 as acting chief executive officer and chief
20 restructuring officer, I have not been part of
21 editing videos or heard of editing videos
22 under my control or watch, sir.

23 Q. Will you commit to ceasing any
24 more removal of videos, editing, that sort of
25 thing?

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2 MR. McCARRICK: Object to

3 form.

4 Q. So to, like, restate it clearly
5 because the form was poor, will you commit as
6 the acting CEO to order the immediate
7 cessation of going through all of Celsius'
8 content using estate funds --

9 MR. McCARRICK: Objection --

10 Q. -- and editing it?

11 MR. McCARRICK: Object to the
12 form.

13 Q. And removing it?

14 MR. McCARRICK: Object to the
15 form. Mischaracterizes. Outside
16 the scope.

17 You can answer.

18 A. I am not a part of or will be part
19 of editing videos or making videos for
20 YouTube, sir.

21 Q. Sir, to be clear, you are not
22 willing to -- you're not willing to basically
23 order people at the company to stop this
24 activity?

25 MR. McCARRICK: Object to the

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2 form.

3 Q. But you're the CEO, you could
4 direct people not to do this activity anymore.

5 MR. McCARRICK: Object --

6 Q. You're not willing to make that
7 commitment?

8 MR. McCARRICK: Okay. Object
9 to the form. Well outside the
10 scope. Was specifically carved out
11 pursuant to the agreement.
12 Mischaracterizes.

13 And now you can answer.

14 A. To -- to my -- best of my ability,
15 there will be no editing or production of
16 videos going to YouTube. I run a very classic
17 business. The idea of putting out
18 ask-me-anythings and, as you are describing,
19 potentially editing them, not on my watch,
20 sir.

21 I don't need to say it's not going
22 to happen. It's not happening on my watch. I
23 don't -- I don't partake in this stuff. I
24 don't think it's valuable to the estate. I
25 can't speak to what happened in the past, but

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2 this is not an activity that I'm involved in
3 or would condone.

4 If it's happening, I don't know
5 about it and it will stop, sir. Unless
6 there's a good reason for it, it should not go
7 on. I do not know of any editing that's
8 happening right now with videos.

9 MR. McCARRICK: Object to --

10 Q. Excellent. I do not either, to be
11 clear, at the moment. I know there's been a
12 lot of it, and maybe even including as you
13 transitioned into the role, which is not
14 saying you oversaw it or knew.

15 But I think it has been going on
16 and it may still be going on. I don't know.
17 But I'll leave it at that. Thank you for
18 stating that you don't support that.

19 So from the time you've been CFO
20 and just during your time at Celsius, in the
21 ordinary course of business, did Celsius pass
22 on 80 percent of its gross revenue to account
23 holders in the form of rewards?

24 MR. McCARRICK: Object --

25 Q. There were definitely statements

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2 about that, so I just want to ask if that was
3 true.

4 MR. McCARRICK: Okay. Object
5 to form. Again, this was carved
6 out. We didn't respond to this
7 written deposition question.

8 We'll let you respond to it
9 here if you have personal knowledge.

10 If you don't, you should say so.

11 A. Yeah, my understanding is that
12 they targeted a payout at 80 percent, but in
13 reality, because the deployment didn't return
14 the income that was expected, it was actually
15 above 80 percent.

16 Q. It was above 80 percent, that's
17 your understanding?

18 A. Yeah, the pay out ratio was above
19 80 percent. I know this through the budgeting
20 exercise that I worked on.

21 I will say this: I grew up in an
22 industry where you don't price to things like
23 80 percent. You look at the risk-based return
24 on risk-based capital, and you accrete value
25 based on upon making the right decisions.

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2 So I would not support, nor would
3 I go out in a new company saying 80 percent or
4 anything like that. I would -- I would do my
5 best to earn a reasonable market-based return
6 on the capital and manage the risk.

7 Q. All right. Do any retail or
8 institutional borrowers who had stablecoin
9 loans from Celsius still have these cash loans
10 in their possession?

11 MR. McCARRICK: Object to the
12 form. Outside the scope.

13 You can answer, Mr. Ferraro.

14 A. If I understand the question
15 correctly, outstanding loans, do customers
16 still have the fiat or the stablecoins?

17 Q. Yeah.

18 A. I think that's based upon their
19 spending habits and what they wanted to do
20 with the money. I don't know what customers
21 do with the money that we give them, whether
22 it's in stables or whether it's in fiat.

23 They could have bought a car.
24 They could have paid off bills. They could
25 have gone on a vacation. Honestly, I don't

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2 know what remains in their bank account, sir.

3 Q. All right. Is Celsius -- is the
4 parent company an LLP? Is it a C Corp.? What
5 is the corporate structure of the parent
6 company of Celsius?

7 MR. McCARRICK: Objection.

8 Doesn't have any apparent relevance
9 to the current motion. Outside the
10 scope.

11 You can answer.

12 A. Not in front of me, and I don't --
13 honestly, I don't know the answer to that.
14 We're a corporation. We have numerous LLCs,
15 but I don't know what the total rollup is.

16 Q. I'm surprised you don't know, but
17 I'll leave it at that.

18 A. I'm busy on a lot of stuff, sir.

19 MR. McCARRICK: Objection. No
20 need -- no need -- objection. No
21 need to comment on the witness'
22 answer.

23 MR. HERRMANN: Fair.

24 Q. When did -- when did you -- when
25 did you first become aware that Celsius was

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2 insolvent?

3 MR. McCARRICK: Object to
4 form. I think he's answered this
5 question now three or four times
6 today.

7 MR. HERRMANN: All right. We
8 can move on then actually. That's
9 fine.

10 I think I'm pretty much -- I
11 think that's -- I think I'm good. I
12 want to leave time for the other pro
13 se questioners. So thank you.

14 THE WITNESS: Thank you.

15 MR. HERRMANN: And I'll pass
16 it
17 onto the next person.

18 MR. McCARRICK: Thank you,
19 Mr. Herrmann.

20 Could the next questioner
21 announce their name, spell it for
22 the record.

23 MR. FRISHBERG: Yes. My name
24 is Daniel Frishberg, D-a-n-i-e-l,
25 Frishberg, F-r-i-s-h-b-e-r-g. I've

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2 got a couple of questions.

3 EXAMINATION BY

4 MR. FRISHBERG:

5 Q. I'll start off with something
6 fairly easy. I don't think this has been
7 covered yet. Has Celsius modified any dates
8 in the app showing when the awards were paid
9 out and/or the amount of the awards paid out?

10 MR. McCARRICK: Objection to
11 form.

12 You can answer.

13 A. Not to my knowledge, sir.

14 Q. Okay. Because they were modified.
15 Also this is -- yeah, this is a big one that I
16 tried communicating -- when I was in
17 communication with Mr. Latona with Kirkland &
18 Ellis, he said:

19 "Prior to the petition date,
20 the company sold approximately
21 31,000 Bitcoin worth approximately
22 \$750 million on the FTX platform to
23 repay DeFi borrowings, freeing up
24 approximately 41K of collateral."

25 I assume this is reference to the

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2 41K Bitcoin collateral:

3 "In the form of WBTC worth
4 approximately \$950 million, which
5 was returned to the company's
6 treasury."

7 My question is where did the --
8 sorry, end quote at the "treasury."

9 Where did that 41,000 W Bitcoin
10 go? Because according to court filings,
11 Celsius only had approximately 24,000 W
12 Bitcoin and about 14,000 Bitcoin, which is
13 less than the amount withdrawn from FTX, and
14 blockchain data shows that Celsius pulled out
15 about 55,000 Bitcoin from DeFi petition.

16 MR. McCARRICK: Okay. First,
17 object to form. Outside the scope.

18 You can answer to the extent
19 that you know.

20 And Mr. Frishberg, I can talk
21 at a pretty quick clip. If you can
22 just slow it down a hair.

23 MR. FRISHBERG: Sorry. I'm
24 nervous.

25 MR. McCARRICK: No, it's

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2 totally fine. Just especially when
3 the questions are so long, it's
4 easier to break it down if you slow
5 down just a hair.

6 But you can answer.

7 THE VIDEOGRAPHER: Hold on one
8 second. I need to go off the
9 record. The camera is dark in here
10 because of the lighting. I need to
11 go off the record, reset, and go
12 back. Take a quick minute.

13 MR. McCARRICK: Mr. Frishberg,
14 re-ask the question.

15 (Discussion off the record.)

16 MR. McCARRICK: Off the
17 record.

18 THE VIDEOGRAPHER: The time
19 now is 4:40 p.m. This concludes
20 Media 7. Off the record.

21 (Recess taken from 4:40 p.m.
22 to a 4:49 p.m.)

23 THE VIDEOGRAPHER: The time
24 now is 4:49 p.m. This begins Media
25 8. On the record.

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2 MR. FRISHBERG: May I ask my
3 question again, or are you guys
4 ready?

5 THE VIDEOGRAPHER: Yes.

6 MR. FRISHBERG: Okay. Cool.

7 BY MR. FRISHBERG:

8 Q. Because I have a statement
9 ventured in the question. When I was in
10 communication with Mr. Latona, he said:

11 "Prior to the petition date,
12 the company sold approximately
13 31,000 Bitcoin worth approximately
14 \$750 million on the FTX platform to
15 repay DeFi borrowings, freeing
16 approximately 41,000 collateral in
17 the form of W Bitcoin worth
18 approximately \$750 million, which
19 was returned to company's treasury."

20 So my question is: Where did that
21 41,000 W Bitcoin go according to Celsius --
22 according to court filings, Celsius has
23 approximately 24,000 W Bitcoin and about
24 14,000 Bitcoin, which is 3,000 less than the
25 central FTX.

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2 Blockchain data also shows that
3 Celsius ended up pulling out about 55,000
4 Bitcoin from DeFi prepetition, but it's not
5 showing up in the court filings, along
6 with -coins, about half a billion dollars
7 worth of ETH, Ethereum, Matic, and Chainlink
8 Celsius all sent, FTX, along with a large
9 amount of stablecoins, et cetera.

10 MR. McCARRICK: Okay. Object
11 to --

12 Q. So --

13 MR. McCARRICK: Object to
14 form. Object. Outside the scope.
15 Object. Compound. And not sure if
16 everything is being accurately
17 characterized.

18 But to the extent that you're
19 able to comment, please do.

20 A. Yeah, I don't -- I don't have all
21 those numbers in front of me. I was not the
22 CFO at that time. So I'm going to do my best
23 to explain what I understood that happened.

24 You know, we did have DeFi
25 borrowers. We thought that it would be a good

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2 thing to not have risk in DeFi, all of that
3 collateral risk while we were going into the
4 filing. So my understanding is that the DeFi
5 loans were paid down and the collateral was
6 freed up.

7 Now, the collateral was freed up
8 and brought back into Fireblocks as quick as
9 we possibly could, also my understanding.

10 And, you know, some of these -- some coins
11 were converted to dollars, which is why you
12 see the fiat bank account at the petition of
13 \$170 million.

14 So there was a lot -- a flurry of
15 movement on the balance sheet leading up to
16 petition as the balance sheet was
17 restructured. We paid down debt, we got fiat
18 cash on hand, and we brought coins home to
19 Fireblocks.

20 Q. Okay. Just moving on to the terms
21 of service. If someone did not consent to the
22 terms of service such as via e-mail --

23 CERTIFIED STENOGRAPHER: I'm
24 sorry, you're going to have to slow
25 down, please.

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2 Q. When people were asked to consent
3 to the new terms of service, like they were
4 notified by e-mail or in the app or however,
5 and let's say someone did not agree to the
6 change for whatever reason, would them
7 e-mailing Celsius support be enough for them
8 to terminate the contract, or what would be
9 required for the contract to terminate or not
10 to take effect, I guess, the updated version?

11 A. There was a period of time where
12 the customers could withdraw. I think after a
13 couple of weeks, they needed to talk to
14 somebody in customer care. But upon that
15 conversation, if they did not want to accept
16 the terms and use, they could withdraw their
17 coins from the platform.

18 Q. Okay. Thank you.

19 MR. FRISHBERG: Sorry. Just
20 give me a second.

21 THE WITNESS: Take your time.
22 No problem.

23 MR. FRISHBERG: That was my
24 cat.

25 Q. Okay. Could you describe the

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2 general process, if you're aware, of how long
3 it took for someone's account to be closed
4 after it was requested to be closed?

5 A. Related to not accepting the terms
6 of use? I wasn't --

7 Q. In general. Generally, in
8 general.

9 A. Yeah, I don't have a -- I don't
10 have an answer to that question. We opened
11 and closed customer accounts as normal course
12 of business. We process withdrawals as a
13 normal course of business.

14 I don't think that it would have
15 been outside of any normal service level in
16 the crypto industry for returning coins or
17 closing accounts.

18 Q. Okay. Could -- do you by chance
19 have Docket Number 393 in front of you? It's
20 all the various terms of services.

21 A. I couldn't -- you spoke too fast,
22 I'm sorry, sir. Could you --

23 Q. Do you have a declaration -- not
24 declaration -- Docket Number 393, it's the
25 various versions of the terms of service, in

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2 front of you?

3 A. No.

4 Q. It's the document with the

5 April 15, 2022, terms of service.

6 A. No, I have my declaration, and I
7 also have the responses to the questions, the
8 written deposition questions in front of me.

9 Q. I guess, then, I can read it to
10 you and you can tell me which understanding of
11 it is -- this is the first section of -- the
12 first paragraph of Section 12, page 629 of
13 Docket 393:

14 "All eligible digital assets
15 that you elect to utilize in the
16 earn service, if available to you,
17 and thus are loaned to Celsius (1)
18 are not being used as collateral for
19 loans; (2) have not had all rights
20 in connection with them assigned to
21 another Celsius user using CelPay,
22 and (3) were not requested for
23 external transmission or withdrawal
24 (eligible digital assets meeting
25 each one of these three criterias,

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2 'loan digit assets') entitle you to
3 rewards while credited to your
4 account."

5 Is it your understanding of the
6 contract that the title is only being
7 transferred when the criterias are being met
8 and when interest is being paid in exchange
9 for a title?

10 MR. McCARRICK: Object to
11 form. Incomplete. Document's not
12 in front of him.

13 But you can respond based on
14 the snippet that Mr. Frishberg read.

15 A. I think, Mr. Frishberg, I believe
16 what you're reading is, kind of, how the
17 rewards worked.

18 Q. Correct.

19 A. If you are in the earn program and
20 you transfer title to Celsius, you earn
21 rewards. But if you use that cryptocurrency
22 as collateral, obviously that is no longer
23 going to earn rewards. It's set aside for --

24 Q. And --

25 A. -- collateral.

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2 Q. And also the subsection said that
3 they were also not requested for external
4 transmission. If they are requested for
5 external transmission, they are not earning
6 interest and not part of the rewards program.
7 Is that correct?

8 MR. McCARRICK: Object to
9 form. Were you reading that or
10 summarizing it just so the record is
11 clear?

12 MR. FRISHBERG: Summarizing.
13 I was summarizing.

14 MR. McCARRICK: Okay. You can
15 answer.

16 I'll object to form.

17 And you can answer based on
18 your understanding.

19 A. I mean, I think if somebody -- my
20 understanding would be if you wanted to
21 withdraw funds from the point of withdrawal,
22 you would not earn rewards.

23 Q. Correct. Thank you. That's my
24 understanding as well. Generally, your
25 understanding of the contract, what terms in

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2 the contract allowed Celsius to halt or limit
3 withdrawals or prevent them, whatever -- in
4 the pause and would they be in Sections 10,
5 11, and 13?

6 MR. McCARRICK: Object to
7 form. Outside the scope. The
8 document is not in front of him.

9 But you can answer to the best
10 of your ability.

11 A. There was language around, kind
12 of, non-normal course. I don't remember the
13 specific language. Again, the document's not
14 in front of me, but I think it, you know, was
15 related to unforeseen market events and
16 idiosyncratic events that Celsius was going
17 under.

18 Q. Makes sense. This is again Docket
19 Number 393, page 644, Section 19:

20 "In the event of irregular
21 activity, we may hold assets until
22 we close your Celsius account. Any
23 digital access that Celsius returns
24 to you will be sent to the
25 designated withdrawal addresses in

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2 the usual profile on the Celsius
3 platform for each respective digital
4 asset."

5 Would this mean that, say, once an
6 account has been closed, the withdrawal will
7 be processed regardless of these
8 circumstances?

9 MR. McCARRICK: Object to
10 form.

11 Q. Other than, like, an attachment or
12 court-ordered lien, et cetera, generally
13 speaking to the designated withdrawal
14 addresses?

15 MR. McCARRICK: Object to
16 form. Outside the scope.
17 Incomplete documents not in front of
18 you.

19 You can answer based on your
20 understanding.

21 A. My understanding is that's talking
22 about certain activity in which they would
23 freeze an account. So I think what they're
24 saying is you've broken the terms of service,
25 your account is frozen, we're going to

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2 distribute it back to you, and close your
3 account.

4 Q. So if the account is closed, the
5 assets will be distributed back?

6 A. Under what you're reading, if I
7 understand what you're summarizing, yes. That
8 would be for activities on the platform that
9 were outside the terms and service, we would
10 then freeze the account and close the account
11 is what it's saying.

12 If the user doesn't, kind of,
13 fulfill the terms of service, their account
14 would be suspended.

15 Q. Okay. I'm going to read you a
16 quote from Docket Number 393, page 632:

17 "In consideration for the
18 rewards payable to you the eligible
19 digital assets used in the earn
20 service for us entering into any
21 loan agreement and the use of our
22 services, you grant Celsius subject
23 to applicable law and for the
24 duration of the period during which
25 you elect to utilize the eligible

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2 digital stock assets in the earn
3 service if available to you. And
4 thus loan such eligible digital
5 assets to us through your Celsius
6 account or as collateral under the
7 borrow service, if available to you,
8 all right and title to such eligible
9 digital assets."

10 My question is: The quote that I
11 just read to you, does it seem that a Celsius
12 customer's only lending the assets and
13 transferring title while they are earning
14 interest, and, if so, is it unambiguous?

15 MR. McCARRICK: Objection to
16 the form. Incomplete. Document's
17 not in front of them. If you're not
18 going to show him the document
19 you've got to read it slower.

20 MR. FRISHBERG: I can send the
21 document over.

22 MR. McCARRICK: Or you can
23 screen share it. Long story short
24 is if -- you don't have to share the
25 document. We just need you to read

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2 it slower. There's no way for --

3 MR. FRISHBERG: Okay. I'll
4 read it slower. And I can also
5 screen share it.

6 MR. McCARRICK: Either one I
7 think will help keep all of the
8 language, which is long, in
9 everyone's head, and I think will
10 also help the court reporter.

11 MR. FRISHBERG: Sorry. This
12 is loading because it's 1,200 pages
13 long.

14 THE WITNESS: Sir, I won't be
15 able to read it, because I don't
16 have my glasses. And I'm quite far
17 away. Maybe if you just read it
18 slower, I think we can get to the
19 right spot.

20 MR. FRISHBERG: Fair enough.
21 There we are.

22 BY MR. FRISHBERG:

23 Q. Can you see this now?

24 A. I can't see that, no.

25 Q. Is it showing on the screen?

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2 A. Is on the screen. I just can't
3 read it.

4 Q. Okay. There we are. This is the
5 Section 28. Is it better?

6 A. Yeah. Thank you. Maybe if you
7 could -- there we go. Perfect. Thank you.
8 Just give me a moment to read it.

9 Q. No worries.

10 A. (Document review.)

11 Yes, sir.

12 Q. Does what you just read state that
13 Celsius' customers own lending their access to
14 Celsius and therefore the title once they have
15 earned interest and, if so, is it unambiguous?

16 MR. McCARRICK: Objection.

17 Incomplete. Full document is not
18 featured here.

19 You can answer to the extent
20 you're able to answer.

21 A. My understanding is in normal
22 course, that as long as the customer was in
23 the earn program, they would earn rewards. If
24 they would draw coins, obviously the rewards
25 would stop accruing when it was withdrawn.

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2 What we're living under since the
3 pause is, kind of, nonordinary course. We
4 paused all swaps, transfers, withdrawals, et
5 cetera. And then in the bankruptcy
6 proceedings, we stopped accruing rewards. And
7 I think that's consistent with, kind of, how
8 you operate under bankruptcy. It's not normal
9 course.

10 Q. Makes sense. You state in your
11 declaration that having an earn account,
12 thereby having use of Celsius' services,
13 "services is expressly conditioned on consent
14 being bound."

15 Does this mean that somebody could
16 close their account at any time prepetition?

17 A. At ordinary course prepause, yes,
18 sir.

19 Q. Okay. What do you mean by
20 "prepause"? There's no exceptions in the
21 contract saying that after that, an account
22 closure means you cannot draw assets -- sorry.
23 That the pause -- that you cannot close your
24 account if limitations on withdrawals have
25 been instituted, such as the pause, there's

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2 nothing in the contract that says you cannot
3 close your account.

4 MR. McCARRICK: Object to
5 form. Mischaracterizes. Calls for
6 a legal conclusion.

7 You can answer to the extent
8 that you understand the question.

9 A. It's not my understandings of the
10 agreement, sir. I think under certain events,
11 we can pause withdrawals. I don't have it in
12 front of me, but upon my mind -- recollection
13 of going through it, we had the right under
14 certain conditions to pause withdrawals.

15 Obviously if withdrawals are
16 paused, people have coins on the platform, we
17 can't close the account.

18 Q. Where does that say that, that
19 accounts cannot be closed if withdrawals are
20 stopped?

21 MR. McCARRICK: Object to
22 form. Outside the scope.

23 You can answer.

24 A. I don't understand the question.
25 Where does it say what?

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2 Q. The question: Where does it state
3 that an account cannot be closed if
4 withdrawals are paused?

5 A. Well, how could -- if withdrawals
6 are paused and somebody has coins in their
7 account, how can you close it?

8 Q. Closing an account, it terminates
9 the terms that therefore allows for
10 withdrawals, as per the section -- let's
11 see -- Section 19, I'll make it bigger for
12 you. Actually, I'll just skip straight to the
13 actual document so that that's not an issue
14 for an objection.

15 Right here, Section B. If you
16 could read that into the record, please, up
17 until Subsection A, that's not relevant.

18 A. Sir, I can't see it.

19 Q. Okay. That's fine. Then I can
20 just -- I had it copied and pasted onto my
21 screen. I can increase the font size a bunch.

22 A. (Document review.)

23 Sorry. So what's the question?

24 Q. The question is: Could you please
25 read this and after that, is -- have you read

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2 that?

3 A. Yeah, this is talking about
4 closing an account in ordinary course. We
5 went through this. I think post --

6 Q. There's -- nothing's been stated
7 in ordinary course to the subsection. And
8 right here it says that after an account has
9 been requested to be closed, the terms
10 terminate. So my understanding is if the
11 terms terminate, thereby anything that is not
12 in Section 35, which is these ones --

13 MR. McCARRICK: Object --
14 object to form. These are, like,
15 snippets of a contract that aren't
16 full sections.

17 Q. I mean, the thing is, if you read
18 the contract fully, it is quite confusing and
19 ambiguous. So is it unambiguous or is it
20 ambiguous?

21 MR. McCARRICK: Well, I think
22 our position on that's clear, but --

23 Q. -- that's your position?

24 MR. McCARRICK: Just give me a
25 second. I'm objecting to the form.

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2 I'm objecting to the incomplete
3 nature of the document that's being
4 displayed. You can re-ask your
5 question to Mr. Ferraro.

6 BY MR. FRISHBERG:

7 Q. Okay. My question for Mr. Ferraro
8 is: Did anywhere in the sections that
9 governed closing the account or limitations on
10 withdrawals, did anything mention an account
11 cannot be closed if withdrawals were
12 instituted?

13 MR. McCARRICK: Object to
14 form.

15 A. Sir, I do not have the contracts
16 in front of me. There's eight different terms
17 of use that I understand. They total over
18 1,000 pages. In preparation, I did my best to
19 prepare for it.

20 My understanding is that in
21 ordinary course, we would process withdrawals
22 according to the customer wishes, including
23 closing the accounts, and that there's
24 language in the contract that gives us the
25 right to pause -- to pause withdrawals given,

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2 kind of, events that are occurring.

3 So in normal course, you're right.

4 We would -- we would return coins and close an

5 account. Once we pause, we can't return

6 coins. We've paused that activity. We can't

7 close an account if there's coins in there.

8 Q. So the sections that allow you to

9 not return the coins, AKA, the pause, would

10 they not terminate with the termination of the

11 entirety of the terms minus the survival

12 section?

13 MR. McCARRICK: Objection to

14 the form. Same objections as I've

15 been making.

16 You can answer this one again.

17 A. I'm not a lawyer. I didn't draft

18 the contract. In my reading of it and

19 understanding of it, it's clear. I'll restate

20 it.

21 In normal course, if a customer

22 wants to close their account, they would

23 withdraw their coins and close the account.

24 Post pause, it was -- no one had

25 the ability to withdraw coins. We can't close

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2 your account if you have ten Bitcoin in there.

3 Q. Where does it say that?

4 A. Again, the contract is not in
5 front of me. I'm not a lawyer. I didn't
6 draft it. I did my best to review it and
7 prepare for this.

8 Q. So wouldn't that mean there is
9 some ambiguity and disagreement in there
10 because it doesn't specifically say anything
11 one way or the other clearly, therefore,
12 ambiguity?

13 MR. McCARRICK: Object --
14 object to form.

15 A. These are legal questions. I
16 think the contract's clear. I think it's
17 unambiguous. Clearly you're in a different
18 position. That's why we're under, you know, a
19 judge's supervision in these key gating legal
20 questions. The judge will rule on them.

21 Q. So the entirety of the contract,
22 in its entirety, including the various
23 subsections that I mentioned are unambiguous,
24 per your opinion?

25 A. Sorry, there's a fly buzzing

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2 around me. I don't know how it got to the
3 50th floor but somehow the fly got up here.

4 I apologize.

5 Yeah, to me it's clear, title is
6 transferred. I've done through that in my six
7 hours of testimony today. Yes.

8 Q. I'm asking about the entirety of
9 the contract. Is the entirety of the contract
10 clear and unambiguous, not just the sections
11 about transferring title?

12 MR. McCARRICK: Yeah,
13 object --

14 MS. WESTOVER YANEZ:
15 Objection.

16 MR. McCARRICK: Object to
17 form. It's not the relevant
18 question, it's also a legal
19 question.

20 You can answer.

21 A. It's a legal question. I'm not a
22 lawyer. I'll leave that for the lawyers to
23 decide. To me in reading through it, it was
24 clear, Mr. Frishberg.

25 MR. FRISHBERG: Thank you.

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2 That's it for today. Thank you so
3 much.

4 THE WITNESS: Thank you.

5 MR. McCARRICK: Thanks,
6 Mr. Frishberg.

7 All right. Next pro se
8 creditor up to bat, if you can state
9 your name and spell it for the court
10 reporter.

11 MR. COHEN HOFFING: Hi, I am
12 Jeremy Cohen Hoffing, pro se
13 creditor. And to spell my first
14 name, J-e-r-e-m-y, last name Cohen
15 Hoffing, C-o-h-e-n H-o-f-f-i-n-g.

16 EXAMINATION BY

17 MR. COHEN HOFFING:

18 Q. Hi, Mr. Ferraro, I just have a
19 couple brief questions. If I were to request
20 proof of acceptance of different versions of
21 the TOS for an individual user like myself,
22 would you be able to provide that proof?

23 A. Me, not personally, but tomorrow
24 Oren Blonstein will be here to talk in detail
25 about these questions, sir.

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2 Q. Okay. Thank you.

3 A. My understanding is you had to
4 accept the terms of use in order to progress
5 with opening your account, full stop.

6 Q. Right. But if you -- but if I
7 were to request for proof of that, that that
8 actually took place, would I be able to
9 receive evidence?

10 A. Again, to open your account and,
11 kind of, process-wise, you had to go through
12 those steps. Oren tomorrow will have a more
13 fulsome discussion about those details,
14 including the aspects of his declaration. So
15 I would probably save that for there.

16 To me, my understanding is in
17 order to open an account, you had to progress
18 through these screens and click acceptance.
19 Contract or Terms of Use 6, you had to
20 clickwrap. You had to not only check it, you
21 also had to accept it. That's my
22 understanding, sir.

23 Q. Understood. And while that may be
24 true, and your back office systems will have
25 recorded that. So hopefully Oren Blonstein

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2 can provide any proof if requested.

3 My next question: Was the
4 creation of the custody account product, was
5 that to help protect nonaccredited investors?

6 MR. McCARRICK: Objection.

7 Outside the scope.

8 You can answer.

9 A. Yeah, I think we went through this
10 a little bit earlier. The earn product was
11 our marquee product. Pretty much all of the
12 customers came to Celsius for earn. Given the
13 backdrop, you know, we felt that we needed to
14 launch a custody product in order to suit
15 certain customers.

16 Our belief was that we wanted to
17 be able to have the customers on the
18 platform -- right? -- we wanted to provide the
19 services to the customer. And my
20 understanding was -- again, I was not part of
21 this. I've done my best to try to understand
22 what happened and the decisions that were
23 made.

24 My understanding was the custody
25 product was launched in order to, kind of,

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2 give a secondary product to the earn product.

3 And the earn product was starting to get --

4 you know, there was chatter about whether or

5 not it would be able to be offered --

6 right? -- regulatory inquiries, things like

7 that.

8 So we needed -- you know, we had

9 600,000 customers with a balance with us. So

10 we were trying to make sure that we had

11 products and services and not lose our

12 customers.

13 Q. So do you think there was any

14 regulatory pressure that helped initiate the

15 offering of a custody product?

16 A. I don't know if it was direct or

17 not. I know that there was plenty of

18 regulatory scrutiny around these products.

19 That's my understanding, yes.

20 Q. Do you think there's any relation

21 to those regulatory bodies considering, you

22 know, the offering of unregistered securities?

23 MR. McCARRICK: Objection to

24 form. Outside the scope. Calls for

25 speculation.

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2 You can answer.

3 A. I think what I've said is the earn
4 was our marquee product. We didn't want to
5 risk losing customers because we couldn't
6 offer them services anymore.

7 So what we wanted to do was
8 diversify and come up with a secondary product
9 offer in custody. I think regulatory scrutiny
10 might have been one thing. Again, I wasn't
11 here. There probably was others as well.

12 I think the custody product has
13 proven today, given the macro events with
14 other platforms, I think custody is the future
15 in this business. So I think the custody
16 product offering is a good product.

17 Q. What was the percentage of your
18 customers in earn versus custody?

19 MR. McCARRICK: Object to
20 form. I think you answered this
21 already, but you can answer it
22 again.

23 A. Yeah, I mean, I think it's in the
24 first day declaration. We had, you know,
25 north of about 200 million or so in custody

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2 balances, and the vast majority, rest was in
3 earn. So 90-plus percent was in earn.

4 Q. So it seems like earn is the
5 product that enticed people to participate in
6 your platform. Is that correct?

7 MR. McCARRICK: Object --
8 objection to form.

9 You can answer.

10 A. There's a customer, kind of,
11 adoption curve that occurs when you launch a
12 new product. So it's not like you launch a
13 new product and everybody just goes there.
14 Earn was the product offering for probably
15 four-plus years. So it would make sense that
16 the custody, kind of, offering would have an
17 adoption curve like any other product that
18 gets released.

19 Q. Okay. So after April 15, 2022, is
20 when you offered custody, and so if you were
21 to make new deposits to an earn account, did
22 you have to be an accredited investor?

23 MR. McCARRICK: Objection. I
24 think we covered this ground
25 earlier.

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2 But you can answer it again to
3 the best of your understanding.

4 A. Yeah, I'll try to echo what I said
5 earlier. I believe that if you were
6 nonaccredited post the launch of custody in
7 the US, any new deposits went to custody. If
8 you were accredited, you could continue to,
9 you know, fulfill inbound transfers into earn
10 and internationally as well. That's my
11 understanding in this situation.

12 Q. Can you define the difference
13 between an unaccredited investor versus an
14 accredited one?

15 MR. McCARRICK: Objection.

16 Calls for a legal conclusion.

17 THE WITNESS: Yeah.

18 MR. McCARRICK: But you can
19 answer based on your subjective
20 understandings.

21 A. There's a process in which you're
22 trying to show that you have the, kind of,
23 capability for more complex offerings, et
24 cetera. So that could be a level of
25 sophistication, kind of, the activities that

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2 you invest in, or your overall wealth is my
3 understanding of the accreditation process.

4 It's trying to make sure that for
5 sophisticated products, it's for sophisticated
6 or accredited investors.

7 Q. Okay. So by that reasoning, why
8 would I not be allowed to make new deposits to
9 earn as an unaccredited investor?

10 MR. McCARRICK: Object.

11 Outside the scope.

12 You can answer.

13 A. I don't understand the question.
14 I'm sorry.

15 Q. So after April 15, if I'm
16 unaccredited, what is the reasoning why I
17 wouldn't be able to make new deposits to earn?

18 MR. McCARRICK: Object to
19 form. Outside the scope.

20 You can answer to the extent
21 you understand.

22 A. Yeah, I believe you can make
23 new --

24 Q. I wouldn't be able to because I'm
25 not unaccredited. Right?

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2 MR. McCARRICK: Objection to
3 form. Mischaracterizes. Outside
4 the scope.

5 You can finish your last
6 answer.

7 A. I forgot what I was saying but --
8 I lost my thought, I'm sorry.

9 Q. Okay. Sorry. Let me re-ask the
10 question.

11 By your reasoning that to be
12 defined as an accredited investor you have to
13 have a certain amount of wealth, is one of the
14 reasons you gave, and if you don't meet those
15 requirements, you are not allowed to be able
16 to make new deposits onto an earn account
17 because you didn't meet those -- that
18 accredited status. Correct?

19 MR. McCARRICK: Object to
20 form.

21 You can answer.

22 A. Yeah, my understanding is after
23 the launch of custody, if you were in the US
24 and you were not accredited, new deposits
25 would go to your custody account. That was

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2 the product we were offering for that slice of
3 customers, nonaccredited customers after
4 April 15 went to custody. That's correct.

5 Q. Okay. Thank you. So my question
6 then is: If you were an unaccredited investor
7 and you had already made deposits into earn
8 after the new products changed in an offering
9 of custody, why were users that were
10 unaccredited -- why did they remain -- why did
11 their deposits remain in earn instead of being
12 moved over to custody?

13 MR. McCARRICK: Objection to
14 form. Outside the scope.

15 You can answer.

16 A. Yeah, I think I answered this
17 earlier. Existing deposits post the launch
18 of -- pre the launch of custody for
19 nonaccredited were grandfathered, I'm using
20 the term "grandfathered," into the earn
21 product.

22 The customers could have moved
23 their balances to custody, and if they moved
24 their balances from earn to custody, they
25 wouldn't have been able to move them back.

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2 Q. Do you support the decision to
3 keep them grandfathered into earn, especially
4 for unaccredited investors that weren't aware
5 of the differences between the custody and
6 earn?

7 A. I --

8 MR. McCARRICK: Object to the
9 form.

10 I think he's testified
11 multiple times that he wasn't
12 involved in any grandfathering
13 decision, that he wasn't there.

14 But you can repeat that
15 testimony.

16 A. I think the custody product
17 offering is a key offering in crypto. I think
18 it's a great idea to, kind of, have the
19 industry move to that space. The users could
20 have transferred their balances from earn to
21 custody.

22 I believe I was not part of the
23 decision. I was probably not even with the
24 company when a lot of these decisions were
25 occurring.

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2 Do I -- do I support that? You
3 know, I haven't thought about it in that way.
4 I think the custody product is a great
5 offering. And for people who want to be in
6 custody, you know, it's not a bad idea in this
7 industry and in this marketplace.

8 Do I think it was the right
9 decision? I don't know. I haven't thought
10 about it.

11 Q. Do you believe in consumer
12 protections for, you know, unaccredited
13 investors?

14 MR. McCARRICK: Object to the
15 form. Outside the scope. Vague.

16 You can answer to the extent
17 that you understand the question.

18 A. I come from a very regulated
19 background where consumer protections were
20 very well understood, and I support those
21 protections and I support smart regulations.
22 That's my background.

23 I worked with regulators very
24 closely for a decade. And I found them to
25 be -- they made -- they made me better at my

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2 job, let's put it that way. So I welcome
3 regulation. I welcome customer protections.

4 I think for this industry to
5 really get out and being nascent and to grow
6 and to be widely adopted, we need those
7 protections. And as long as I'm involved with
8 this company, you know, that will be the goal,
9 is to, you know, think ahead to future
10 regulation and protections and be on the right
11 side of that.

12 MR. COHEN HOFFING: Thank you.

13 That ends my questioning.

14 THE WITNESS: Thank you, sir.

15 MR. McCARRICK: Thanks,

16 Mr. Hoffing.

17 Okay. Next creditor up, if
18 you could state your name for the
19 record, and spell it and just, yeah.

20 MR. DE LAS HERAS: Okay.

21 Yeah. I am Victor Ubierna De Las
22 Heras. I am a pro se creditor. I'm
23 from Spain so maybe if you don't
24 understand me, you can stop me. So
25 I apologize that.

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2 EXAMINATION BY

3 MR. DE LAS HERAS:

4 Q. The first question is: Are you
5 familiar with the Slack channels of the
6 company?

7 MR. McCARRICK: Object to
8 form. Sorry I could not understand.

9 (Stenographer clarification.)

10 (Discussion off the record.)

11 A. I couldn't understand. Oh, Slack
12 channels. Am I familiar with Slack channels.

13 Q. Yeah. The ones from Celsius?

14 A. Yeah, yeah. No, I use Slack.

15 That's the internal messaging system, the
16 software that we use to communicate, yes.

17 Q. Are you familiar with a leaked
18 channel in which realtime, big withdrawals
19 were posted for approval or completion?

20 (Stenographer clarification.)

21 MR. McCARRICK: Would it be
22 possible for you to type the
23 question into the chat?

24 MR. DE LAS HERAS: I will
25 share my screen if that's okay with

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2 you.

3 MR. McCARRICK: Oh, I see.

4 MR. DE LAS HERAS: So this is
5 the question asked.

6 MR. McCARRICK: Sir, can you,
7 kind of, make it a little bit
8 bigger, please?

9 Okay. All right. So just for
10 the record, the question is:

11 "Are you familiar with a
12 leaked channel," I assume referring
13 to Slack channel, "in which
14 realtime, big withdrawals were
15 posted for approval or completion?"

16 And I'm going to object to
17 that question as outside the scope
18 on the basis of form, but you can
19 answer to the extent you understand
20 it.

21 A. I'm not familiar with the
22 withdrawal Slack channel. There could be --
23 there could have been one. I just, to my
24 knowledge, was not part of it and didn't
25 follow it.

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Q. Okay. Thank you. So now on
another topic, and in your declaration in
paragraph Number 23, you say that:

"Debtors typically advised
existing users of updates to the
terms of use via e-mail and other
official Celsius channels, such as
the Celsius app."

Is that correct?

A. Yeah, that's my understanding that
any changes to the terms of use would be --
there would be a pop-up in the Celsius app.
There would be e-mail.

Q. Do all Celsius users use the
Celsius app or are there users who don't use

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2 the app?

3 MR. McCARRICK: Object to

4 form.

5 You can answer.

6 A. My understanding is it went
7 through the app. So they would have seen the
8 pop-ups. They could have probably accessed
9 their account online as well. But it would've
10 seen the similar things. I think Oren would
11 be a great resource to talk in specifics about
12 this tomorrow.

13 Q. Okay. So you don't know anything
14 about customers who don't have the Celsius app
15 and that access their Celsius account through
16 a third party?

17 A. Oh, partnership channel. You're
18 talking about an AP- -- the partner API so
19 folks --

20 Q. Yeah --

21 A. -- who came in through the
22 partnership channel? Yeah, I think that's --
23 I think if you could that would be a best --
24 question best suited for Oren tomorrow.

25 MR. DE LAS HERAS: Okay. So

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2 with that, I don't have any more
3 questions, thank you.

4 THE WITNESS: Thank you, sir.

5 MR. McCARRICK: Thank you,
6 sir.

7 Okay. Are there any other pro
8 se creditors with questions at this
9 time?

10 Okay. Hearing nothing, we
11 will close the deposition. We'll
12 read and sign.

13 And thank you, Mr. Ferraro,
14 for your time.

15 And thank you to all the
16 participants for yours.

17 THE WITNESS: Thank you.

18 (Continued on the next page.)
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2 CERTIFIED STENOGRAPHER: This
3 is the stenographer. If anyone
4 wants to order a copy of the
5 transcript, you must e-mail me. My
6 e-mail is going is in the chat right
7 now.

8 (Discussion off the record.)

9 THE VIDEOGRAPHER: The time
10 now is 5:28 p.m. This concludes
11 Media 8 of 8 today's deposition.
12 Off the record.

13 (Time noted: 5:28 p.m.)

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A C K N O W L E D G M E N T

STATE OF)

: ss

COUNTY OF)

I, CHRISTOPHER FERRARO, hereby
certify that I have read the transcript
of my testimony taken under oath in my
deposition of November 21, 2022; that
the transcript is a true, complete, and
correct record of my testimony, and that
the answers on the record as given by me
are true and correct.

CHRISTOPHER FERRARO

Signed and subscribed to
before me this _____
day of _____, 2022.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NASSAU)

I, PATRICIA A. BIDONDE, a Notary
Public within and for the State of New
York, do hereby certify:

That CHRISTOPHER FERRARO, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me, and
that such deposition is a true record of
the testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this day,
November 22, 2022.

Patricia A. Bidonde

PATRICIA A. BIDONDE
Stenographer
Registered Professional Reporter
Realtime Certified Reporter

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E R R A T A

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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E R R A T A

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In Re: Celsius Network LLC

Dep Date: November 21, 2022

Deponent: Christopher Ferraro

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E R R A T A (Continued)

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Christopher Ferraro

Signed and subscribed to before me

this ____ day of _____, 2022

Notary Public

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Exhibit I

PRO BANKRUPTCY PEOPLE

Third Avenue Management CEO David Barse Departs

By Gregory Zuckerman, Rob Copeland, Matt Wirz and Serena Ng

Updated Dec. 14, 2015 5:34 pm ET

Third Avenue Management LLC has parted ways with Chief Executive David Barse, a move that comes just days after the firm rattled financial markets and the mutual-fund industry by barring withdrawals from its junk-bond fund.

The firm said in a news release on Monday announcing Mr. Barse's departure that its management committee---consisting of Chief Investment Officer David Resnick, Chief Financial Officer Vincent Dugan, General Counsel W. James Hall, portfolio managers Matthew Fine and Jason Wolf---would lead Third Avenue going forward.

The Wall Street Journal first reported Mr. Barse's departure Sunday.

A security guard at the firm's New York headquarters said Sunday that Mr. Barse had been let go and isn't allowed back in the building. On Saturday, emails to Mr. Barse were returned with a message of "undeliverable." A rival bond executive who spoke with Mr. Barse on Friday afternoon said he quickly got off the phone without sharing any details about his departure.

Mr. Barse had led Third Avenue since 1991, according to the company's website, and is a large shareholder. He was the public face of the firm's announcement Thursday that it was closing its six-year-old, \$789 million Third Avenue Focused Credit Fund and would bottle up investors' money for months or more as it tries to liquidate its assets.

The move roiled credit markets Friday and sparked widespread concern about other mutual funds with large holdings of corporate junk bonds. The largest U.S. junk-bond exchange-traded fund closed at its lowest level since 2009 Friday on record trading volume.

Mr. Barse didn't respond to requests for comment.

On Dec. 10, the day the firm announced it was halting withdrawals, traders at Wall Street banks circulated a list of bonds offered for sale by a single seller that matched many of the largest holdings reported by Third Avenue, said several hedge-fund managers who saw the list. Most hedge funds passed on the portfolio, which contained deeply distressed bonds and private equity investments that are hard to trade.

But Barry Kupferberg, head of research at hedge fund Trilogy Capital, snapped up private equity in Longview Power LLC, a low-cost coal-burning power plant in West Virginia, at a more-than-40% discount to the \$8 price at which the shares were quoted. Trilogy has cash on hand, Mr. Kupferberg says, because the fund has been bearish on high yield since the summer when it raised its cash allocation to about 40% of assets.

"We consider having cash as a real strategic weapon---the one thing you know about cash is it's completely liquid," he said.

Third Avenue used an unusual legal strategy to effectively halt redemptions without obtaining an order of authorization from the U.S. Securities and Exchange Commission, a person familiar with the matter said.

The firm paid out all redemption requests through Dec. 8, the night before it closed the fund, then transferred all of its investments to a liquidating trust, which issued interests to be distributed to shareholders in the now-defunct fund.

Third Avenue argued that the distribution of the shares in the trust would count as a full redemption, meaning the fund wouldn't legally have halted distributions, the person familiar with the matter said. Shareholders in the trust will have no redemption rights and will be repaid as-and-when Third Avenue decides to sell assets in the trust.

The firm presented the strategy to the SEC hours before announcing it publicly and didn't obtain the regulator's approval, the person said.

An attorney for Third Avenue discussed the terms of the proposed transaction, among other ideas, with the SEC starting Dec. 3 on a "no-names" basis but didn't disclose the identity of his client until around Dec. 9, an executive for Third Avenue said.

The Third Avenue Focused Credit Fund was set up in the summer of 2009, close to the end of the latest U.S. economic recession. It invested in high-yielding loans and securities issued by heavily indebted companies, loading up on junk bonds, subordinated bank loans and unrated securities of distressed companies that were at high risk of defaulting on their obligations.

Its strategy was to build a concentrated portfolio, making large bets on securities that typically traded at deep discounts to their face value.

Within a year, the fund had roughly \$900 million in investments. Its assets under management topped \$3 billion in 2014, as the fund reaped the benefits of an upward march in prices of junk bonds and other risky assets that surged in value as the U.S. economy recovered.

By its fifth anniversary in August 2014, the fund had chalked up a five-year annualized return of 11.9%, according to Third Avenue. But its performance swung wildly from year to year. In 2013, its return of 16.5% put it in the top 1% of high-yield funds tracked by Morningstar. By the end of 2014 it had slipped to the bottom 1% of the category following a minus-6.3% return.

The fund was managed by Thomas Lapointe, who joined Third Avenue in 2009 from Columbia Management, where he had worked for a decade and overseen high-yield investments.

The Focused Credit Fund's investment stance was significantly more aggressive than other junk bond mutual funds. More than half the bonds it held paid annual coupons of over 10%, while the average high-yield fund had less than 5% of its assets in that category, according to Morningstar.

As the Third Avenue fund scooped up large amounts of distressed debt and unrated securities, it also became the largest holder of certain loans and securities that traded infrequently, according to a person familiar with the matter.

When the fund's performance deteriorated this year and investor redemptions surged, it started liquidating some of its investments, but its outsized holdings enabled savvy traders to quickly figure out that a large investor was under pressure to sell, this person said.

The result was that Third Avenue received lowball bids for some of its assets, which would have caused it to absorb big losses if it sold at those prices.

The fund was down 27% for 2015 through Wednesday, according to Morningstar. For the year, high-yield funds as a category are down 3.8%, according to the data tracker's website.

Write to Gregory Zuckerman at gregory.zuckerman@wsj.com, Rob Copeland at rob.copeland@wsj.com, Matt Wirz at matthieu.wirz@wsj.com and Serena Ng at serena.ng@wsj.com

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<http://www.wsj.com/articles/how-the-third-avenue-fund-melted-down-1450903135>

Exhibit J

MARKETS

How the Third Avenue Fund Melted Down

Years of discord ended in a final showdown, with CEO David Barse escorted from the building



David Barse had been with Third Avenue Management for 24 years.

PHOTO: CHRIS GOODNEY/BLOOMBERG NEWS

By Gregory Zuckerman And Matt Wirz

Dec. 23, 2015 3:38 pm ET

The end came quickly for David Barse.

For 24 years, Mr. Barse helped lead Third Avenue Management LLC, a mutual-fund company founded by legendary investor Marty Whitman known for profiting from beaten-down investments. At its peak in 2006, Third Avenue managed more than \$26 billion.

But in the early afternoon of Dec. 11, Mr. Barse was trying to hold the firm together. Walking into a conference room at its midtown Manhattan offices, he presented a rescue plan for the company's high-profile Focused Credit mutual fund. The fund, packed with risky debt, was in free fall and had halted customer withdrawals—a nearly unprecedented step for mutual funds, which are required to promptly return investor money. Now, he wanted to sell the fund's assets to private-equity firm Fortress Investment Group LLC.

Mr. Barse's partners delivered a shocking response: No way.

Mr. Barse, 53 years old, grew agitated, said people familiar with the presentation. Meeting with the firm's management committee later that afternoon, Mr. Barse vowed to go ahead with the Fortress deal anyway, convinced it was the best move for the fund's investors.

Tensions grew, and Mr. Barse was told the group had come to a different decision. They were firing him, and he needed to vacate the building immediately, without stopping to collect his personal belongings.

Mr. Barse was escorted into an elevator, through the high-ceiling lobby and out the door. Guards in the lobby stared in surprise.

"It was a fiasco," a security guard said.

Back upstairs, some seemed stunned by the rapid-fire events.

Investors around the world took the Third Avenue meltdown as an ominous signal. Junk-bond markets tumbled, sparking worries about other mutual funds. Markets remain on edge and investors continue to ask how a mutual fund could unravel so rapidly and how a pedigreed firm could run into such deep problems.

“It’s the unforgiving reality of the market, they really had to do what they did,” said John Bogle, founder of mutual-fund giant Vanguard Group. “But it’s very surprising they would allow themselves to be in this position.”

An examination of the credit fund’s collapse based on conversations with nearly 20 employees, former employees and others close to the situation points to a firm hobbled by prolonged dissension, with Mr. Barse often at the center, criticizing Mr. Whitman and prodding managers to improve disappointing performance. The discord sapped morale and prompted the departure of some senior talent at the firm, whose assets under management this year fell to \$7.2 billion.

Mr. Barse is “a very tough-minded person and he wasn’t running a kindergarten,” said Jim Millstein, chairman and founder of restructuring firm Millstein & Co., in which Third Avenue invested a few years ago.

Attempts to reach Mr. Barse by telephone, text message and email were unsuccessful. A Third Avenue representative referred to an early statement by Mr. Whitman thanking Mr. Barse for his “years of devotion to the firm and contributions.” A spokesman for Affiliated Managers Group, a public Boston company that owns 60% of Third Avenue, said, “We are confident in the firm’s future path.”

Attempts to speak with Mr. Whitman weren't successful. Fortress wouldn't comment.

Under Mr. Whitman's leadership, Third Avenue—which started in 1974 and scored early gains investing in mortgage bonds of the then-bankrupt Penn Central Railroad—became among the most respected mutual-fund firms, emphasizing “vulture” investments in the debt of struggling companies.

Senior corporate executives regularly made their way to the couch in Mr. Whitman's office for an audience with the famed investor.

“Marty was an academic at heart who approached every day as if the workplace were a laboratory to test his theory of deep-value investing,” said Peter Lupoff, a former partner.

In 1991, Mr. Whitman hired Mr. Barse, then a 28-year-old corporate attorney who had been involved in the early development of the secondary market for distressed debt. Mr. Barse quickly gained favor with Mr. Whitman, handling the business operations of the growing company. That enabled Mr. Whitman to focus on investing, said people who worked there at the time.

After becoming CEO in 2002, Mr. Barse drove growth by helping to launch new funds. That year, Messrs. Whitman and Barse sold 60% of the company to AMG. Executives vowed to increase assets, then \$4 billion, to \$25 billion, a former employee recalls. They met their promise in 2006, when assets hit \$26 billion, partly as investors piled into the flagship Third Avenue Value Fund run by Mr. Whitman, which focused on stocks.

But Third Avenue lost about half its assets during the 2008 credit crisis. The firm's highly concentrated style, inspired by Mr. Whitman's approach to value investing, backfired and his stock fund lost 45% in that year, exceeding the 37% decline in the S&P 500.

Mr. Barse became concerned about competition from low-cost index-tracking mutual funds, according to a former employee. Third Avenue attempted to launch "alternative" funds, or vehicles that resembled hedge funds, but most never clicked.

One winner: the credit fund, which was launched in 2009 and quickly raced past \$1 billion in assets. The fund, which was Mr. Barse's brainchild, bought hard-to-trade distressed debt and other investments likely to rise as the economy rebounded.

Most distressed-debt investors operate private funds that can delay repaying investors if their holdings become hard to trade. By opting instead for a mutual fund, Third Avenue was able to sell to individual investors but increased its risk by promising them an easy exit.

As the performance of Mr. Whitman's own stock fund lagged after 2008, his relationship with Mr. Barse turned tense, adding to strain within the firm. Mr. Barse criticized Mr. Whitman's concentration in Hong Kong real-estate shares, which the CEO argued was making it harder to market the fund, people familiar with the situation said.

Mr. Barse also harangued other fund managers who grew disgruntled. Mr. Whitman took no public steps to rein in the CEO, the people said, preferring to focus on investing.

“All Marty wanted to do was sit in his office and read 10-Ks and 10-Qs,” one former executive said.

The dispute boiled over in the fall of 2011, when about 50 employees gathered in the firm’s largest conference room after an annual meeting with investors. Mr. Barse screamed at Mr. Whitman, inches from his face, demanding better performance, according to people who were in the room.

“You can’t tell me what to do,” Mr. Whitman responded, one of the people said. “We analyze companies, that’s what we do, we don’t change that.”

Mr. Whitman “was pounding the table so hard with his fist it was shaking,” said another person at the meeting.

[Mr. Whitman] was pounding the table so hard with his fist it was shaking.

— said a person at the meeting.

Mr. Whitman eventually withdrew money from the Value Fund and quit running it to focus on investing for himself, while remaining chairman of the firm.

As most of Third Avenue’s funds underperformed relevant benchmarks—only its real-estate fund beat a comparable index over the past five years—Mr. Barse seemed to become more irritated, the people said.

Staff stopped using the conference room adjoining Mr. Barse’s office because sometimes he could be heard shouting through the walls.

Over 2012 and 2013, a number of Third Avenue's senior fund managers, including international investor Amit Wadhwane, complained to AMG about Mr. Barse's style and unwillingness to share profits, people familiar with the matter said.

Most employees received part of their pay on a deferred basis. After 2008, Mr. Barse began personally determining compensation for most personnel, often without explaining his decision, one of the people said. Someone close to Mr. Barse says "lead portfolio managers" could pay underlings from a pool of money determined by performance, among other things.

AMG told the executives it would encourage Mr. Barse to change, but it had a hands-off approach to its affiliates, a person familiar with the matter said. Eventually, senior employees, including Mr. Wadhwane and Curtis Jensen, a former protégé of Mr. Whitman, left. Mr. Wadhwane wasn't available for comment, while Mr. Jensen declined to comment.

While Third Avenue's stock funds were shrinking, the credit fund kept growing, led by portfolio manager Thomas Lapointe, who had formerly run a traditional high-yield bond fund at Columbia Management. Mr. Lapointe admired Mr. Whitman's strategy of making large, concentrated bets, a tack that can reap big returns but also amplifies risk.

Diversification "is a damn poor surrogate for knowledge, control and price consciousness," Mr. Whitman said in an interview with Barron's earlier this year.

The credit fund became the single-largest holder of certain hard-to-exit bonds. For example, it owned a fifth of a \$250 million issue of low-rated bonds sold by New Enterprise Stone & Lime Co., a private construction-materials supplier.

As the fund grew, Mr. Barse and Mr. Lapointe sometimes argued over investments, former colleagues said.

Sometimes the differences spilled into the open.

In the spring of 2012, after Mr. Lapointe defended an employee Mr. Barse had publicly reprimanded, Mr. Barse threw a cellphone at Mr. Lapointe's chest, a stunned Mr. Lapointe told a colleague. Mr. Lapointe declined to comment. Someone close to Mr. Barse denies the incident.

About four years ago, while Mr. Lapointe was on vacation, Mr. Barse sold a position in the fund, according to three former employees, a move that is typically the domain of a portfolio manager, not the CEO. When Mr. Lapointe returned, he became furious, they said.

The credit fund scored gains of nearly 17% in 2013, putting it in the top 1% of all high-yield funds. But in the spring of 2014, as the fund approached a peak of \$3.5 billion, Bradley Alford, who runs Atlanta's Alpha Capital Management and had clients in the fund, became nervous it was getting too big.

Mr. Lapointe told Mr. Alford that Third Avenue "was dealing" with the growth, Mr. Alford says. The credit fund never closed to investors and Mr. Alford's clients yanked their money, concerned about junk bonds.

Mr. Barse voiced some concern about the risk of holding hard-to-sell assets while allowing investors to sell out in a day, according to someone who worked with him.

"David was worried about the mismatch," said the ex-employee.

When the junk-bond rout began in July and the firm's assets slipped to \$10 billion, Mr. Barse didn't seem especially nervous.

But by early December the credit fund was down about 27% on the year and assets fell to around \$800 million. It had received so many withdrawal requests that Third Avenue informally reached out to the Securities and Exchange Commission to give regulators a sense of the mounting troubles, executives said. Third Avenue decided to freeze the fund's redemptions—a move approved by its board of trustees.

“It's extremely painful,” Mr. Barse told The Wall Street Journal at the time.

A day later, his colleagues shot down his Fortress deal, concerned the SEC hadn't agreed to the idea, according to people close to the matter.

Today, a group of five executives runs Third Avenue. Mr. Whitman, 91, remains chairman.

On the morning of Dec. 11, after Mr. Barse addressed investors on a conference call, a friend called Mr. Barse to check in.

Mr. Barse sounded calm, the executive recalls.

“He seemed normal, like it was business as usual,” the person said.

Hours later, Mr. Barse was out the door.

—Serena Ng contributed to this article.

Appeared in the December 24, 2015, print edition.



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Exhibit K

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Exhibit L



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Thanks for always thinking in the best interest of the community
[@Mashinsky](#) [@NukeGold](#) [@Theloansqueen](#) you guys are amazing people
👏👏👏👏
 1

**Mikel Roberts** @MikelRbrts · Apr 23, 2021
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Lulz




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2/2

ORDER SUMMARY – Case Number: C-19-2750

Name: Celsius Network, Inc.

Order Number: C-19-2750-19-CO01

Effective Date: 9/16/19

License Number: NMLS ID 1905328
Or NMLS Identifier [U/L]

License Effect: N/A

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$ 2,505.00		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 9/17/19
	No. of Victims:	N/A		

Comments:

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
WHETHER THERE HAS BEEN A
VIOLATION OF THE UNIFORM MONEY
SERVICES ACT OF WASHINGTON AND
CONSUMER LOAN ACT OF WASHINGTON
BY:

CELSIUS NETWORK, INC.,

Respondent.

No. C-19-2750-19-CO01

CONSENT ORDER

COMES NOW the Director of the Department of Financial Institutions (“Director”), through his designee Richard St. Onge, Division of Consumer Services Acting Director, and Celsius Network, Inc., and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.230 Revised Code of Washington (“RCW”), the Uniform Money Services Act (“UMSA”), and chapter 31.04 RCW, the Consumer Loan Act (“CLA”), (collectively referred to as “Acts”), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

A. FINDINGS OF FACT

1. Respondent Celsius Network, Inc. (“Respondent”) is a Delaware corporation with its office at 221 River Street, 9th Floor, Suite 9129, Hoboken, New Jersey 07030. Respondent has never obtained a license in accordance with the Acts from the State of Washington Department of Financial Institutions (Department) to provide money services or to make loans.

2. Unlicensed Activity. Beginning in at least June 2018, Respondent advertised, held itself out as providing money services, engaged in the business of money transmission, and offered to make

loans in Washington State without being licensed as a money transmitter or consumer loan company.
Respondent advertised through at least one website: <https://celsius.network>.

B. CONCLUSION OF LAW

Based on the above Findings of Fact, Respondent violated RCW 19.230.030 and RCW 31.04.025 by engaging in the business of money services and a consumer loan company in Washington State without first obtaining and maintaining a license in accordance with the Acts or meeting an exclusion from the Acts under RCW 19.230.030 and RCW 31.04.025.

C. AGREEMENT AND ORDER

The Department and Respondent have agreed upon a basis for resolution of the Findings of Fact and Conclusion of Law identified in this Consent Order. Pursuant to RCW 19.230.233, RCW 31.04.093(7), and RCW 34.05.060, the Department and Respondent agree to entry of this Consent Order and further agree that the matters alleged herein may be economically and efficiently settled by the entry of this Consent Order. Respondent hereby admits the Findings of Fact and Conclusion of Law identified in this Consent Order.

Based upon the foregoing:

1. Jurisdiction. It is AGREED that the Department has jurisdiction over the subject matter of the activities discussed herein.

2. Waiver of Hearing. It is AGREED that Respondent has been informed of the right to a hearing before an administrative law judge and hereby waives any right it has to a hearing and any and all administrative and judicial review of the issues raised in this matter or the resolution reached herein.

3. License Required. It is AGREED that Respondent understands that in order to engage in the business of money services in Washington State, Respondent must first obtain a money transmitter license in accordance with UMSA or qualify for an exemption from licensing as delineated in

UMSA. It is further AGREED that Respondent understands that in order to make loans to Washington State residents, Respondent must first obtain a consumer loan company license in accordance with the CLA or qualify for an exemption from licensing as delineated in the CLA.

4. Cease and Desist. It is AGREED that Respondent shall cease and desist from holding itself out being able to or providing money services to Washington State consumers until such time as Respondent obtains a license in accordance with UMSA. It is further AGREED that Respondent shall cease and desist from making, facilitating, or assisting in making or financing any loans to Washington State residents until such time as Respondent obtains a license in accordance with the CLA.

5. Investigation Fee. It is AGREED that Respondent shall pay an investigation fee to the Department in the amount of \$2,505.00 in the form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this Consent Order.

6. Application for License. It is AGREED that the entry of this Consent Order will not preclude Respondent from obtaining a license under either of the Acts. It is further AGREED and understood, however, that should Respondent submit a license application under either of the Acts, Respondent must still meet all requirements under the Acts.

7. Non-Compliance with Order. It is AGREED that Respondent understands that failure to abide by the terms and conditions of this Consent Order may result in further legal action by the Director. In the event of such legal action, Respondent may be responsible to reimburse the Director for the cost incurred in pursuing such action, including but not limited to, attorney fees.

8. Records Retention. It is AGREED that Respondent, its officers, employees, and agents shall maintain records in compliance with the Acts and provide the Director with the location of the books, records and other information relating to Respondent's business conducted prior to licensure, and the

1 name, address and telephone number of the individual responsible for maintenance of such records in
2 compliance with the Acts.

3 **9. Rights of Non-Parties.** It is AGREED that the Department does not represent or have the
4 consent of any person or entity not a party to this Consent Order to take any action concerning their
5 personal legal rights. It is further AGREED that for any person or entity not a party to this Consent
6 Order, that this Consent Order does not limit or create any private rights or remedies against
7 Respondent, limit or create liability of Respondent, or limit or create defenses of Respondent to any
8 claims.

9 **10. Authority to Execute Order.** It is AGREED that the undersigned have represented and
10 warranted that they have the full power and right to execute this Consent Order on behalf of
11 Respondent.

12 **11. Counterparts.** This Consent Order may be executed by the parties in any number of
13 counterparts, including e-mail of a PDF file, or other similar file, each of which shall be deemed to be
14 an original, but all of which, taken together shall constitute one and the same Consent Order.

15 **12. Effective Date.** It is AGREED that this Consent Order shall be effective when signed by the
16 Director's designee.

17 **13. Voluntarily Entered.** It is AGREED that Respondent has voluntarily entered into this
18 Consent Order.

19 **14. Completely Read, Understood, and Agreed.** It is AGREED that Respondent has read this
20 Consent Order in its entirety and fully understands and agrees to all of the same.

21 //

22 //

23 //

RESPONDENT:

Celsius Network

By:

/s/
ALEX MASHINSKY
Chief Executive Officer

9-9-2019
Date

/s/
JEREMIE BEAUDRY
Chief Compliance Officer and
General Counsel

9-9-2019
Date

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 16th DAY OF September, 2019.

/s/
RICHARD ST. ONGE
Acting Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

/s/
JEANJU CHOI
Financial Legal Examiner

Approved by:

/s/
STEVEN C. SHERMAN
Enforcement Chief

Exhibit N

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey
07101 (973) 504-3600

IN THE MATTER OF:

Celsius Network, LLC,

Respondent.

**SUMMARY CEASE
AND DESIST ORDER**

Pursuant to the authority granted to Christopher W. Gerold, Chief of the New Jersey Bureau of Securities (“Bureau Chief”), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -89 (“Securities Law”) and certain regulations thereunder, and based upon documents and information obtained during the investigation by the New Jersey Bureau of Securities (“Bureau”), the Bureau Chief hereby finds that there is good cause and it is in the public interest to enter this Summary Cease and Desist Order (“Order”) against Celsius Network, LLC.

The Bureau Chief makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Celsius Network, LLC (“Celsius”) is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, as well as by engaging in propriety trading. Since June 2018, Celsius has been, at least in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts. Celsius refers to these unregistered securities as its “Earn Rewards” account.

2. Celsius solicits investors to invest in the Earn Rewards accounts by depositing certain eligible cryptocurrencies into the investors' accounts at Celsius. Celsius then pools these cryptocurrencies together to fund its various income generating activities, including lending operations and proprietary trading. In exchange for investing in the Earn Rewards product, investors are promised an attractive interest rate that is paid weekly in the same type of cryptocurrency as originally invested, or, subject to certain conditions, in Celsius' native digital token CEL (which are not currently available for U.S.-based account holders).

3. The Celsius Earn Rewards accounts are not registered with the Bureau or any other securities regulatory authority, or otherwise exempt from registration. Celsius' Earn Rewards accounts are not protected by the Securities Investor Protection Corporation ("SIPC"), insured by the Federal Deposit Insurance Corporation ("FDIC"), or insured by the National Credit Union Administration ("NCUA"). This lack of a protective scheme or regulatory oversight subjects Celsius investors to additional risks not borne by investors who maintain assets with most SIPC member broker-dealers, banks and savings associations, or credit unions.

4. Despite the lack of safeguards that SIPC, FDIC, and the NCUA would offer or the regulatory oversight of registration, Celsius held the equivalent of more than \$14 billion from the sale of these unregistered securities in violation of the Securities Law as of August 18, 2021.

5. The Bureau Chief enters this Order to protect the investing public by halting the offer and sale of these unregistered securities, and the contribution of additional assets to existing accounts. Nothing in this order shall preclude Celsius, or any of its affiliates, from paying interest, also known as "Rewards" on the existing Celsius Earn Rewards accounts or refunding principal to the Earn Rewards investors consistent with Celsius' Terms of Use.

A. The Respondent

6. Celsius is a Delaware limited liability company, registered on June 14, 2021, with

offices at 221 River Street, 9th Floor, Hoboken, New Jersey. Celsius conducts its business on the internet, through a website accessible to the general public at <https://www.celsius.network/> (the “Celsius Website”), which is also accessible through Celsius’ own proprietary app via smartphone.

7. Celsius is not presently registered, and has never been registered, in any capacity with the Bureau. Nor have its Earn Rewards accounts ever been registered with the Bureau.

B. The Celsius Earn Rewards Securities

a. Celsius Earn Rewards

8. Celsius offers and sells its Celsius Earn Rewards unregistered securities in the form of individual and corporate accounts. Investors in these accounts (“Earn Rewards Investors”) deposit certain popular cryptocurrencies with Celsius to earn “up to 17.78% APY.” The purported Earn Rewards rates advertised by Celsius are well in excess of the rates currently being offered by short-term investment grade fixed income securities or on bank savings accounts.

9. Celsius offers its Earn Rewards accounts to anyone over the age of eighteen, except for residents of certain foreign jurisdictions subject to regulatory restrictions.

10. When an investor signs up with Celsius, they verify their age, identity and address, provide an identification document, complete a user agreement and a KYC (Know Your Customer) protocol. A link to the Celsius Terms of Use (“Celsius Terms”) appears at the bottom of each of its web pages.

11. The Celsius Website states that Celsius does not require a minimum amount of cryptocurrency for deposit in an Earn Rewards account.

12. Celsius only accepts certain types of cryptocurrencies for deposit in the Earn Rewards accounts. Although Celsius refers to its payments to Earn Rewards Investors as “Rewards,” the term “Rewards” is a substitute for “interest” as is apparent from Celsius’s API Partner disclosures from the Celsius Website:

API Portal / Guides

Interest Calculations



























































This page describes how interest is calculated and disbursed. Celsius pays interest on the value of each asset in a user's wallet. Interest is paid using the same asset(s) that is held in the user's wallet. Obtain current interest rates for each token using the SDK `getInterestRates()` method or Get Interest Rates API operation.

13. Earn Rewards Investors earn a variable interest rate on their investment and may withdraw their digital assets at any time, subject to a maximum three-day processing time specified by Celsius.

14. The variable interest rates for the Earn Rewards Investors are posted on the Celsius Website. Celsius' interest rates for deposits of certain cryptocurrencies in its Earn Rewards accounts are "tiered" depending upon the nature and amount of the cryptocurrency invested, as explained on the Celsius Website. Currently, Earn Rewards Investors are entitled to 6.2% on their first Bitcoin deposited and 3.51% on additional deposits of Bitcoin. Rates on other cryptocurrencies range from 13.99% for the Synthetix Network Token (SNX) to 0.0% for Ripple (XRP):

Cryptocurrencies

Celsius supports today's top cryptocurrencies including native blockchain coins such as Bitcoin and Ethereum, staking coins such as DASH, and utility tokens such as CEL.

	 Bitcoin (Up to 1 BTC)	6.20%
	 Bitcoin (After 1 BTC)	3.51%
	 Ethereum (Up to 100 ETH)	5.35%
	 Ethereum (After 100 ETH)	5.05%
	 CEL	4.86%
	 SNX	13.99%
	 MATIC	10.51%
	 DOT	8.86%
	 BNT	5.50%
	 AAVE	4.86%
	 DASH	4.60%
	 COMP	4.60%
	 BCH	4.51%
	 EOS	4.45%
	 LTC	4.08%
	 ADA	4.06%
	 ETC	3.00%
	 LINK	3.00%
	 XRP	0.00%
	 UNI	2.50%
	 BSV	2.02%
	 ZEC	2.02%
	 ZRX	1.77%
	 XLM	1.00%
	 BAT	1.00%
	 UMA	1.00%
	 OMG	0.50%
	 KNC	0.50%
	 MANA	0.50%

Reward rates are subject to change from time to time. Celsius does not endorse or recommend any digital asset listed above (or at all). The above is not financial advice and is not intended to provide comprehensive information about any specific digital asset or category. Do your own research.

15. Celsius’ also pays interest for deposits of certain stablecoins in its Earn Rewards accounts, as explained on the Celsius Website.

16. The manner in which interest is calculated and credited to Earn Rewards Investors is illustrated on the Celsius Website and specified in the Celsius Terms:

See what you could be earning.

United States Rates International Rates

How much?

\$ 30000

Which crypto?

BTC

How long?

5 Years

Earning with Celsius

\$10,898

APY

6.20%

6.20% on 1st BTC, 3.51% after

Free \$50 in BTC

This calculator is for information and reference purposes only. Rewards are calculated weekly and may change from time to time, and the rates presented above are not guaranteed for the duration of the above term.

Rewards are payable based on a daily periodic rate applicable to the Loaned Digital Assets. The daily periodic rate is calculated by dividing the then-applicable annual reward rate by three hundred sixty-four (364) days; then it is further divided down to the hour, minute, and second of that day. Loaned Digital Assets, including those received as Rewards from previous weeks, will begin gaining Rewards according to the hour, minute, and second on the timestamp verifying the completion of the applicable transaction and shall cease and/or decrease the amount paid as Rewards at the moment when the User has entered an external transmission, withdrawal or transfer of rights (via CelPay) request, or posted any Loaned Digital Assets as collateral for a Fiat Loan. Therefore, any Loaned Digital Asset transferred mid-week will receive Rewards with no distinction, based on the rates calculated for the relative time within the allocation period.

17. Celsius advertises that interest on the Earn Rewards product is paid to investors in cryptocurrency (or CEL Tokens depending on certain factors) based on the “daily periodic rate,” which is “calculated by dividing the then-applicable annual reward rate by three hundred and sixty-four days (364); then it is further divided in the hour, minute, and second of that day” and is credited to the Earn Rewards Investors’ accounts weekly on the first business day of the week.

18. Celsius describes its business model as one that returns 80% of its total revenue to Earn Rewards Investors: “The Celsius business model is structured to do the exact opposite of

what banks do — by giving 80% of total revenue back to our community each week in the form of earned interest. We earn profits by lending coins to hedge funds, exchanges, and institutional traders, and by issuing asset-backed loans at an average of 9% interest. We’re taking the exact same 80% profit margin that banks have kept for themselves for centuries and returning it to our community of depositors.”

b. Celsius’s Promotion of Earn Rewards Accounts as Investment Products

19. Celsius encourages its Earn Rewards account holders to treat their Earn Rewards accounts as long-term investments as evidenced by the statement on Celsius’s homepage: “Start earning top rates on any amount of crypto and get paid every paid every Monday to keep HODLing.” As explained on the Celsius Website “HODL started as a typo and has become a crypto rallying cry. A misspelling of the word ‘hold,’ HODLers believe in the future of digital currencies and know it would be a mistake to sell at this early stage.”

20. Earn Rewards account holders can also manage their Earn Rewards accounts as long-term investments using the “HODL Mode” feature of their Celsius account. Celsius describes HODL Mode on its Website as an account security feature “that gives [account holders] the ability to temporarily disable outgoing transactions from [their] Celsius account. [Account holders] control when HODL Mode is activated and it is an ideal feature for those that do not plan on withdrawing or transferring funds from their account for an extended period of time.”

21. Celsius’s corporate culture of promoting “HODLing,” including its description of Celsius as a “HODLing platform,” the premium interest rates Celsius pays on its Earn Rewards accounts, the weekly compounding of interest payments, and the availability of HODL Mode makes the Celsius Earn Rewards account an attractive long-term investment to Celsius Earn Rewards Investors.

c. **Celsius' Use of the Earn Rewards Deposit Funds**

22. The Celsius Terms provide that an Earn Rewards Investor relinquishes control over the deposited cryptocurrency to Celsius and that Celsius is free to use those assets as it sees fit, including commingling the Earn Rewards Investor's cryptocurrency with those of other Earn Rewards Investors, investing those pooled assets in the market, and lending them to institutional and corporate borrowers. Having relinquished control over the deposited cryptocurrency in their Earn Rewards accounts, the Earn Rewards Investors are passive investors.

23. Specifically, Paragraph 4. B. "Earn Rewards" of the recently-amended Celsius Terms provides:

Our Earn Rewards service allows you to earn a financing fee from Celsius, referred to as "Rewards", in the form of Digital Assets (either in-kind, i.e. in the same Digital Asset you deliver, or in CEL Tokens, where permitted) in exchange for entering into open-ended loans of your Eligible Digital Assets to Celsius under the terms hereof. By lending your Eligible Digital Assets to Celsius you grant Celsius all rights and title to such Digital Assets, for Celsius to use in its sole discretion.

24. Paragraph 13 of Celsius's recently-amended Terms, "Consent To Celsius's Use of Digital Assets," further details the status of cryptocurrency deposited with Celsius by Earn Rewards Investors:

In consideration of the Rewards payable to you on your Celsius Account and the use of our Services, you grant Celsius, subject to applicable law and for the duration of the period during which the Eligible Digital Assets are loaned to us through your Celsius Account, all right and title to such Digital Assets, including ownership rights, and the right, without further notice to you, to hold such Digital Assets in Celsius' own Virtual Wallet or elsewhere, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership, and for any period of time, and without retaining in Celsius' possession and/or control a like amount of Digital Assets or any other monies or assets, and to use or invest such Digital Assets in Celsius' full discretion. You

acknowledge that with respect to the Digital Assets used by Celsius pursuant to this paragraph:

- (i) You will not be able to exercise rights of ownership;
- (ii) Celsius may receive compensation in connection with lending or otherwise using Digital Assets in its business to which you have no claim or entitlement; and
- (iii) In the event that Celsius becomes bankrupt, enters liquidation or is otherwise unable to repay its obligations, you may not be able to recover or regain ownership of such Digital Assets, and other than your rights as a creditor of Celsius under any applicable laws, you may not have any legal remedies or rights in connection with Celsius' obligations to you.

25. Celsius then pools the deposited cryptocurrencies together with Celsius's other assets, to, among other income-generating activities, collateralize Celsius' borrowings, purchase securities and digital assets for Celsius' own account, make loans to institutional and corporate borrowers, and mine for cryptocurrency.

26. Celsius does not disclose to investors: (a) the amount of money devoted to each of these investment activities; (b) the nature and creditworthiness of the borrowers, as well as the identity of any borrowers to whom Celsius has lent material amounts of cryptocurrency; (c) the terms and duration of the loans; (d) the types of securities and digital assets it trades; or (e) the profits or losses derived from these activities.

27. As Celsius's founder, Alex Mashinsky, stated in a March 7, 2021 article he authored for the DataDriveInvestors website, reposted in the "Media" tab on the Celsius Website, "[u]sers transfer assets with Celsius, Celsius lends funds to institutions and returns up to 80% of earnings to users."

d. The Earn Rewards Accounts are Unregistered Security

28. While certain of Celsius' loan products appear to be licensed under various state licensing requirements for money services businesses or money transmitters, the Celsius Earn

Rewards product is not currently registered with any federal or state securities regulator, nor exempt from registration – as required by law, even though the Earn Rewards product is a “security” and subject to such requirements.

29. Celsius fails to disclose to Earn Rewards Investors that its Earn Rewards product is not currently registered by federal or state securities regulatory authorities, even though the Earn Rewards product is a “security” and required to be registered.

e. Celsius’s API Partners Program

30. Celsius offers an Application Programming Interface (“API”) that allows certain institutional users, known as Celsius “API Partners,” to integrate with the Celsius platform.

31. Celsius affords its API Partners the ability to offer the Earn Rewards accounts to retail investors in two different ways.

32. First, the Celsius “Segmented Accounts” platform allows API Partners to offer the API Partners’ own customers the Celsius Earn Rewards accounts through the API Partners’ own portal. An API Partner availing itself of Celsius’s Segmented Accounts structure offers the API Partner’s own retail customers the opportunity to access the Celsius Earn Rewards account through the API Partner’s own portal, as opposed to the API Partner’s retail customers accessing the Celsius Earn Rewards account directly from Celsius’s own website. Apart from the difference in how the Earn Rewards account is accessed, individual retail customers of API Partners offering the Segmented Account option are subject to the same rights, benefits, terms, and conditions as Celsius’s own Earn Rewards Investors.

33. Second, Celsius’s API Partners can choose to access the Celsius Earn Rewards accounts through what Celsius refers to as an “Omnibus Account.” In the Omnibus Account, the API Partner maintains a direct relationship with Celsius and invests in a Celsius Earn Rewards

account for the benefit of its individual customers, whose cryptocurrencies the API Partner has aggregated for the purpose of investing in the Celsius Earn Rewards account on behalf of, and for the benefit of, the API Partner's individual retail customers.

34. Celsius incentivizes the API Partners by paying a fee to Segmented Account partners based on a percentage of rewards payable by Celsius to the end-user, and also pays fees to Omnibus Partners, in addition to the Earn Rewards payable.

35. Celsius is selling unregistered securities in the form of Earn Rewards accounts to its API Partners' Segmented Account customers.

36. Celsius is selling unregistered securities to its API Partners who choose to open API Partner Omnibus Accounts with Celsius.

CONCLUSIONS OF LAW

CELSIUS OFFERED AND SOLD UNREGISTERED SECURITIES **N.J.S.A. 49:3-60**

37. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

38. The Earn Rewards product is a security as defined in N.J.S.A. 49:3-49(m).

39. The Earn Rewards product was and is required to be registered with the Bureau pursuant to N.J.S.A. 49:3-60.

40. The Earn Rewards product has not been registered with the Bureau, is not exempt from registration, and is not federally covered.

41. Celsius has offered and sold unregistered securities in violation of N.J.S.A. 49:3-60 and continues to do so.

42. Each violation of N.J.S.A. 49:3-60 is a separate violation of the Securities Law and

is cause for the denial of certain exemptions.

43. N.J.S.A. 49:3-69(a)(1) empowers the Bureau Chief to issue a cease and desist order against persons engaged in prohibited activities, directing them to cease and desist from further illegal activity or doing acts in furtherance thereof.

CONCLUSION

THEREFORE, it is on this 17th day of September 2021, **ORDERED** that:

44. Effective on November 1, 2021, Celsius and any person, agent, employee, broker, partner, officer, director, affiliate, successor, or stockholder thereof, under any of their direction or control shall CEASE AND DESIST from:

a. offering for sale any security, including any Earn Rewards product, to or from New Jersey unless the security is registered with the Bureau, is a covered security, or is exempt from registration under the Securities Law;

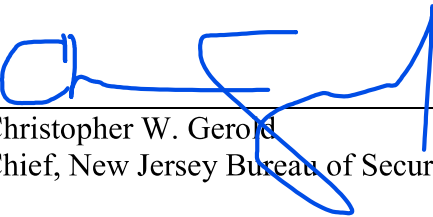
b. accepting any additional assets into an existing Earn Rewards account; and

c. violating any other provisions of the Securities Law and any rules promulgated thereunder for the sale of any security in New Jersey.

45. Nothing in this order shall preclude Celsius from paying interest, also known as “Rewards,” on the existing Earn Rewards accounts or refunding principal to the Earn Rewards Investors consistent with the Celsius Terms.

46. All exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraph 9, 10, and 11 and subsection (b) are hereby DENIED as to Celsius.

47. All exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c), and N.J.S.A. 49:3-56(g) are hereby DENIED as to Celsius.



Christopher W. Gerold
Chief, New Jersey Bureau of Securities

NOTICE OF RIGHT TO HEARING

Pursuant to N.J.S.A. 49:3-69(a)(1)(i), the Bureau Chief shall entertain on no less than three days' notice a written application to lift the Order to Cease and Desist on written application of the person subject thereto and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the person subject thereto a written statement of the reasons for the Order to Cease and Desist.

Pursuant to N.J.S.A. 49:3-69(a)(1)(ii), upon service of notice of the Order to Cease and Desist issued by the Bureau Chief, the person subject thereto shall have up to 15 days to respond to the Bureau in the form of a written answer and written request for a hearing. The Bureau Chief shall, within five days of receiving the answer and request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the Bureau of Securities. Orders issued pursuant to N.J.S.A. 49:3-69 shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the Order shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the Order shall toll the time for filing an answer and written request for a hearing.

Pursuant to N.J.S.A. 49:3-69(a)(1)(iii), if any person subject to the Order fails to respond by filing a written answer and written request for a hearing with the Bureau or moving to vacate the order within the 15-day prescribed period, that person shall have waived the opportunity to be heard. The Order will be a Final Order and shall remain in effect until modified or vacated.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of the relief requested does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.

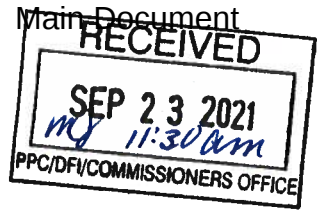


Exhibit O

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2021-AH-00024**

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

EMERGENCY ORDER TO CEASE AND DESIST

CELSIUS NETWORK LLC

RESPONDENT

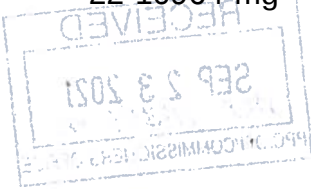
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Comes now the Department of Financial Institutions (hereinafter referenced as the "Department"), pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500, and 808 Kentucky Administrative Regulation (KAR) 10:225, and hereby enters this **Emergency Order to Cease and Desist** against Celsius Network LLC, (hereinafter referenced as "Celsius", the "Company", or "Respondent"). In support thereof, the Department states as follows:

PARTIES

1. The Commissioner is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky ("the Act"), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Celsius Network LLC is a Delaware limited liability company. Respondents have a principal office located at 221 River Street 9th Floor, Hoboken, New Jersey, 07030. Celsius Network LLC has a registered process agent at The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.



STATEMENT OF FACTS

3. On January 11, 2021, the Department became aware that Celsius was engaging in securities-related activities. Subsequently, the Department conducted an investigation into Celsius, learning of the facts and circumstances described herein.

4. On May 26, 2021, the Department searched Celsius's website, <https://celsius.network/>. The website states, among other things, "Meet Celsius: a community of over 1 million users that earn up to 17% yield on their crypto. Get paid new coins every week...", "Earn up to 17% APY paid every week", "Get Celsius. Unbank yourself. Earn high. Borrow low", "Your crypto earns more with Celsius", "Put your money to work", and "You don't need a bank to make bank".

5. Celsius offers Earn Interest Accounts ("EIAs"), which are interest-bearing cryptocurrency accounts that are available on Celsius's website and proprietary smartphone application, as part of its Earn Interest Program. EIAs can be either individual or corporate accounts and are offered to anyone eighteen (18) years of age or older, except for residents of certain foreign jurisdictions. Registering for an EIA requires an investor to mark a box to indicate the investor has read and accepted Celsius's "Terms of Use" and "Privacy Policy". These documents are available on the website via hyperlink, although the investor is able to mark the box regardless of whether the hyperlinks are opened or the documents' contents reviewed.

6. Celsius solicits investors to invest in EIAs by depositing certain eligible cryptocurrencies into the investors' accounts at Celsius. Celsius then pools these cryptocurrencies together to fund its various income-generating activities, including proprietary trading, collateralizing Celsius' borrowings, purchasing securities and digital assets for Celsius' own account, making loans to institutional and corporate borrowers, and mining cryptocurrency. In

exchange for investing in an EIA, Celsius promises to credit U.S. investors with weekly interest payments at an attractive rate and in the same type of cryptocurrency as originally invested.

7. The interest Celsius pays to investors is referred to as “rewards” or a “financing fee” in the Terms of Use and appear to be the motivating factor for investors to choose an EIA. Celsius offers a variable, “daily periodic rate”, which is “calculated by dividing the then-applicable annual reward rate by three hundred and sixty-four days (364); then it is further divided in the hour, minute, and second of that day.” The rate is further tiered to the nature and amount of cryptocurrencies invested. Once calculated, the interest is then credited to the investors’ accounts weekly on the first business day of the week. The rate adjustment appears to be based on the volatile exchange rate of each cryptocurrency, which can fluctuate based on circulation and popularity of the tokens. The rates currently advertised by Celsius are substantially above the rates offered by similar short-term investment securities or similar certificates of deposit offered by banking institutions.

8. Celsius’ Terms of Use demonstrate that EIA investors are passive investors. The Terms of Use grant the Company all right and title to the deposited assets, and the right to

...pledge, re-pledge, hypothecate, re-hypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership, and for any period of time, and without retaining in Celsius’ possession and/or control a like amount of Digital Assets or any other monies or assets, and to use or invest such Digital Assets in Celsius’ full discretion.

A separate section of the Terms of Use features additional Celsius rights “to assign, invest, commingle or otherwise dispose of assets and Eligible Digital Assets to counterparties or hold the Eligible Digital Assets with counterparties.”

9. Celsius's founder, Alex Mashinsky, has stated "[u]sers transfer assets with Celsius, Celsius lends funds to institutions and returns up to 80% of earnings to users."¹ Additionally, Celsius's Terms of Use describe that EIA investors are "exposed to the possibility of Celsius becoming unable to repay its obligations in part or in full, in which case [the investor's] Digital Assets may be at risk." Celsius warns that account holders should "only use funds that [the investor] can afford to lose" though the Company represents to potential investors that it will "use [its] best commercial and operational efforts to prevent losses."

10. At no time before or after investors agree to the EIA Terms of Use does Celsius disclose to investors the amount of money devoted to each of Celsius's investment activities; the identity, nature, or creditworthiness of the borrowers of material amounts of Celsius's pooled cryptocurrency assets; the terms and duration of Celsius's loans; the types of securities and digital assets Celsius trades; or the profits and losses derived from Celsius's use of pooled investor cryptocurrencies.

11. Celsius also offers an Application Programming Interface ("API") that allows certain entities, known as Celsius "API Partners", to integrate with the Celsius platform. Celsius affords its API Partners the ability to offer the EIAs to retail investors either through a "Segmented Accounts" platform or an "Omnibus Account" Platform. The Celsius "Segmented Accounts" platform allows API Partners to offer EIAs accounts to the API Partners' customers through the API Partners' own web portal instead of directly from Celsius's website. Alternatively, the Celsius "Omnibus Account" platform allows API Partners to maintain a direct relationship with Celsius and invest in an EIA for the benefit of the API Partners' customers, whose cryptocurrencies the

¹ Alex Mashinsky, *How Celsius creates prosperity for retail and institutional investors alike*, Data Driven Investor (March 7, 2021), <https://medium.datadriveninvestor.com/how-celsius-creates-prosperity-for-retail-and-institutional-investors-alike-cc086084c6bd>. This article was reposted in the "Media" tab on Celsius's Website.

API Partner aggregates for the purpose of investing. Celsius incentivizes the API Partners by paying a fee to Segmented Account partners based on a percentage of rewards payable by Celsius to the end-user, and also pays fees to Omnibus Partners, in addition to the “rewards” payable.

12. A review of the Department’s records revealed that neither Celsius nor the EIAs offered on its website are registered with the Department as required under the Act. Additionally, neither Celsius nor these EIAs appear to be entitled to any exemption from registration under the Act. The EIAs Celsius offers are not protected by the Securities Investor Protection Corporation (“SIPC”), insured by the Federal Deposit Insurance Corporation (“FDIC”) or insured by the National Credit Union Administration (“NCUA”). As a result, Celsius investors are subject to additional risks compared to investors who maintain assets with most SIPC member broker-dealers, banks and savings associations, or credit unions.

13. Respondent claims to currently hold approximately twenty-four billion dollars’ (\$24,000,000,000) worth of account balances. The Department’s investigation of Celsius’s consumer data found that over a period of three years and four months, 1,607 EIAs were opened among 1,571 Kentucky investors with Celsius and investors pledged \$17,594,229.86 worth of digital assets to Celsius. Celsius in turn has paid these investors a total of \$453,353.78.

STATUTORY AUTHORITY

14. KRS 292.310(19) defines a “security”, in relevant part, as:

...any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a “security[.]”

15. KRS 292.320 states, in pertinent part,

(1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

16. KRS 292.340 states,

It is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.

17. KRS 292.470 states, in pertinent part,

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

(1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. The Department has become aware that the Company is offering securities in the form of investment contracts in exchange for the deposit of assets with the Company. These investment contracts allow passive investors to earn profit in the form of interest on the assets deposited with the Company, and qualify as securities under the Act.

19. Based on the facts set forth above, Respondent offered unregistered securities in Kentucky through a publicly available website, in violation of the Act. These securities were not registered with the Department as required, and do not qualify for an exemption from registration.

20. These EIAs amount to an investment contract because they are “an investment of money in a common enterprise with profits to come solely from the efforts of others.” *See S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

21. In addition to selling unregistered securities, Celsius’s API Partners program does not disclose to API Partner customers that Celsius is the company that the customer is investing his or her cryptocurrencies with and misleads customers to believe it is the customer-facing API Partner’s offering.

22. By reason of the foregoing, Respondent has violated the Act and, unless enjoined, will continue to violate the law.

23. Respondent’s management of assets is completely unregulated, and is not subject to any government oversight or approval.

24. Respondent is not currently subject to any disclosure requirements regarding the risks of investing with the Company, or the potential losses that an investor can suffer after opening an EIA.

25. Accounts opened with Respondent are not insured by the Federal Deposit Insurance Corporation, or any other government entity.

26. This lack of oversight coupled with the extremely volatile nature of the cryptocurrencies used to fund Respondent’s EIAs has resulted in an unregulated market that represents an unprecedented risk to consumers.

27. Delay in issuing a final cease and desist order in this case would cause direct harm to the public due to Respondent's current and foreseeable conduct. Failure of the Department to enter a cease and desist order in this case could result in extensive financial losses to the citizens of the Commonwealth, and consumers harmed in this way may have little to no recourse whatsoever. The emergency nature of this order is essential to protect the interests of the citizens of the Commonwealth due to the high volume of assets and volatile nature of cryptocurrency.

Violation of KRS 292.320

28. Pursuant to KRS 292.320, it is unlawful for any person, in connection with the offer or sale of any security, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

29. Celsius' API Partners program deceives consumers by not disclosing to affected Kentucky consumers that the offered security is through Celsius and not the customer-facing API Partners in violation of KRS 292.320.

Violation of KRS 292.340

30. Pursuant to KRS 292.340, it is unlawful for any person to solicit or sell securities in Kentucky without first being registered with the Department to do so.

31. Through Celsius's publicly available website and smartphone application, Respondent has solicited securities in Kentucky.

32. The Department's records show that Respondent has never been registered with the Department and have never sought registration.

33. The Respondent and the securities Respondent offered do not qualify for an exemption from registration.

34. Therefore, Respondent is in violation of KRS 292.340 by soliciting securities in Kentucky without being appropriately registered to do so.

ORDER

In light of the foregoing, IT IS HEREBY ORDERED that:

1. Respondent, Celsius Network LLC, shall **CEASE AND DESIST** from soliciting or selling any security in Kentucky unless that security is registered with the Department pursuant to KRS 292.340; and

2. Respondent, Celsius Network LLC, shall **CEASE AND DESIST** from any and all activity which would otherwise violate the Act.

SO ORDERED on this the __23rd__ day of __September__, 2021.

_____/s/ *Charles A. Vice*_____
CHARLES A. VICE
COMMISSIONER

Charles
A. Vice

Digitally signed by: Charles A. Vice
DN: CN = Charles A. Vice email = charles.
vice@ky.gov C = US O = Dept. of
Financial Institutions OU = PPC/DFI/
Commissioner
Date: 2021.09.23 10:04:37 -05'00'

NOTICE TO RESPONDENT

You are hereby notified that you are entitled to request an emergency hearing. If requested, an administrative hearing shall be held within ten (10) days pursuant to the provisions of KRS Chapter 13B.125. Please submit any request for hearing, in writing, to Brandon Adcock, Staff Attorney, Kentucky Department of Financial Institutions, 500 Mero Street 2 SW 19, Frankfort, Kentucky 40601. Alternatively, you may also have the right to the judicial review of this Order in Franklin Circuit Court pursuant to KRS 292.470(1).

CERTIFICATE OF SERVICE

I, Mary Johnson, hereby certify that a copy of the foregoing Emergency Order to Cease and Desist was sent on this the 23rd day of September, 2021, by certified mail, return receipt requested, to the following:

Alex Mashinsky
CELSIUS NETWORK LLC
221 River Street 9th Floor
Hoboken, NJ 07030

Registered Agent for Service of Process
THE CORPORATION TRUST COMPANY
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

and by messenger mail or electronic delivery to:

Brandon Adcock, Staff Attorney III
DEPARTMENT OF FINANCIAL INSTITUTIONS
500 Mero Street, 2 SW 19
Frankfort, KY 40601
Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Mary Johnson

Title: Exec. Admin. Sec.

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

Celsius Network Inc.;
Celsius Network Limited;
Celsius US Holding LLC,
Celsius Network LLC;
Celsius Lending LLC;

Respondents.

Order No. S-21-3212-21-SC01

**STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND
DESIST, TO IMPOSE A FINE, AND TO CHARGE
COSTS**

THE STATE OF WASHINGTON TO:

Celsius Network Inc.,
Celsius Network Limited,
Celsius US Holding LLC,
Celsius Network LLC, and
Celsius Lending LLC

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC have violated the Securities Act of Washington. The Securities Administrator believes these violations justify the entry of an order against Respondents Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC to cease and desist from such violations, to impose a fine, and to charge costs pursuant to RCW 21.20.390 and RCW 21.20.395. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. Celsius Network Inc. is a Delaware corporation formed on February 8, 2018 with its principal place of business in Hoboken, New Jersey. Celsius Network Inc. owns over 82% of Celsius Network

Limited. Celsius Network Inc. is not registered to do business in Washington and is not registered with the Securities Division in any capacity.

2. Celsius Network Limited is an England and Wales private limited company formed on February 9, 2018 with its principal place of business in London, England. Celsius Network Limited wholly owns Celsius US Holding LLC. Celsius Network Limited is not registered to do business in Washington and is not registered with the Securities Division in any capacity.

3. Celsius US Holding LLC is a Delaware limited liability company formed on October 5, 2020 with its principal place of business in Hoboken, New Jersey. Celsius US Holding LLC wholly owns Celsius Network LLC and Celsius Lending LLC. Celsius US Holding LLC is not registered to do business in Washington and is not registered with the Securities Division in any capacity.

4. Celsius Network LLC is a Delaware limited liability company formed on June 14, 2021 with its principal place of business in Hoboken, New Jersey. Celsius Network LLC is not registered to do business in Washington and is not registered with the Securities Division in any capacity.

5. Celsius Lending LLC is a Delaware limited liability company formed on October 5, 2020 with its principal place of business in Hoboken, New Jersey. Celsius Lending LLC is registered as a foreign limited liability company in Washington but is not registered with the Securities Division in any capacity.

6. The above-named entities will be collectively referred to in this Statement of Charges as “Respondents” or “Celsius.” Celsius provides various virtual currency-related financial services to retail and institutional customers in the United States, including trading, borrowing, and lending services. Celsius is also engaged in other income-generating virtual currency activities such as proprietary trading, staking, and mining.

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Nature of the Conduct

Overview

7. From approximately June 2018 until February 2019, and again from approximately January 2020 to July 2021, Celsius offered their Earned Interest Program (“EIP”) to Washington customers. The EIP enabled customers to earn interest, called “rewards,” on virtual currencies that the customer deposited with Celsius. Celsius offered the EIP through two methods: (1) Earned Interest Accounts (“EIAs”) that customers can open directly with Celsius, or (2) the API Partners Program, where partner companies can utilize Celsius’ platform to offer their customers the opportunity to participate in the EIP. To earn income to pay interest to EIP customers, Celsius engaged in numerous activities, including lending the customers’ virtual currencies to retail and institutional borrowers. To date, Celsius has paid interest to at least 1,400 Washington residents through the EIP. As of August 29, 2021, Washington customers have a collective account value of over \$137,000,000.

8. Celsius promoted the EIP to Washington residents primarily online. Celsius maintained a website at <https://celsius.network>, through which it provided information about its EIP, a list of supported virtual currencies and their corresponding interest rates, and an updated total of Celsius users and “community assets” on deposit with Celsius. Celsius also promoted the EIP on social media and in numerous “Ask Mashinsky Anything” (“AMA”) YouTube videos featuring its CEO, Alex Mashinsky.

9. Celsius in particular marketed itself as a virtual currency financial solution for its “community” of retail customers called “Celsians.” Celsius represented that it provided “fair and transparent services that have been abandoned by banks” to its retail customers. In an AMA and other online content, Celsius stated that it returns up to 80% of its earnings to customers.

10. Celsius has advertised interest rates of up to 17% APY on particular virtual currencies, much higher than the rates currently being offered for short-term, investment grade, fixed income securities or for

1 bank savings accounts. Celsius does not insure EIAs against losses incurred by customers, nor are EIAs
2 insured by the FDIC, SIPC, or NCUA.

3 **Earned Interest Accounts**

4 11. Celsius allows anyone 18 years and older and residing in a permissible jurisdiction to open
5 EIAs on its website and mobile app. Celsius collects customer information, including photo identification,
6 to verify the customer's identity for "Know Your Customer" (KYC) and anti-money laundering (AML)
7 purposes.

8 12. Celsius also requires customers to accept its Terms of Service upon signing up for an EIA,
9 including the transfer of "all right and title" in the virtual currency from the customer to Celsius. Beginning
10 around August 2021, Celsius began informing customers, through the Terms of Service, that their deposit
11 of virtual currencies into the EIA constituted a loan from the customer to Celsius, and that the interest that
12 Celsius paid to the customer was a finance fee.

13 13. When an EIP customer funds their EIA with a supported virtual currency, Celsius then
14 transfers the virtual currency into its own wallet, where it is pooled with virtual currency from other EIP
15 customers and other Celsius assets.¹ Celsius then deploys the EIP virtual currency towards various income-
16 generating activities (see Paragraph 19).

17 14. Celsius credits the customer's EIA with interest on a weekly basis. The customer can choose
18 between receiving interest in like-kind virtual currency or, where available, in CEL Tokens, Celsius' own
19 virtual currency.² Celsius pays interest to the customer until the customer withdraws their virtual currencies
20

21 ¹ However, beginning some time in 2020 until approximately July 2021, Celsius transferred Washington customers' EIP virtual
22 currencies to a third-party custodian for holding. Celsius maintains that the virtual currencies held by the custodian were not
23 deployed in income-generating activities, though these Washington customers still earned interest on their virtual currencies like
any other EIP customer.

² According to Celsius, CEL Tokens are only available to accredited investors in the United States. Celsius maintains a trading
platform where customers can buy and sell CEL Tokens, though Celsius states that this service is not available to Washington
residents.

1 or uses their virtual currencies as collateral against loans that the customer takes out from Celsius.³ Celsius
2 allows EIA customers to withdraw their virtual currencies at any time, subject to a maximum three-day
3 processing period.

4 15. Celsius revisits the interest rate also on a weekly basis. According to Celsius, it determines
5 interest rates based largely on “market demand” for a particular virtual currency. For certain virtual
6 currencies such as Bitcoin and Ether, Celsius further sets the interest rate using a tiered structure.

7 **API Partner Program**

8 16. Celsius offers other companies the opportunity to provide the EIP to their own customers by
9 becoming an API Partner. Celsius conducts due diligence on a potential API Partner prior to the
10 establishment of the relationship. An API Partner can provide Celsius’ EIP to its own customers through
11 two different types of accounts: Segmented and Omnibus. Both types of API accounts are subject to the
12 same restrictions and conditions as those on Celsius’ own platform.

13 17. With Segmented Accounts, the API Partner’s customers establish a direct relationship with
14 Celsius. Celsius onboards those customers in the same way that it brings on its own customers, including
15 verifying customer identities for KYC/AML purposes. The API Partner’s customers must also open their
16 own Celsius EIA and accept Celsius’ Terms of Service, though the customer accesses their account through
17 the Partner’s platform. Celsius pays interest directly into the customer’s account.

18 18. Omnibus Accounts, on the other hand, require the API Partner to establish its own EIP account
19 with Celsius. Celsius pays interest into that account, and the API Partner then distributes the interest to its
20 own customers. Celsius does not maintain a relationship with the API Partner’s customers and does not
21 know their identities. However, Celsius conducts additional due diligence into the Partners’ business
22

23 ³ The retail borrowing program is not open to Washington residents, according to Celsius.

practices and reviews, among other things, the Partners' policies and procedures related to KYC/AML rules. Celsius establishes a direct contractual relationship with the API Partner and requires the API Partner to offer the same interest to its customers that Celsius offers to its own customers.

Deployment and Income-Generating Activities

19. Celsius uses the virtual currencies deposited by EIP customers in several income-generating activities. These activities include lending the virtual currencies to institutional and retail borrowers, posting it as collateral for its own stablecoin borrowing, and using the virtual currencies for market making, staking, mining, yield farming, and proprietary trading. Celsius also invests the EIP virtual currencies, at times through third party asset managers that are vetted by Celsius. Celsius regularly researches the market to identify other possible income-generating activities and has multiples teams tasked to review the potential of these activities.

20. With regard to institutional and retail lending, Celsius manages most, if not all, aspects of the loan and lending process. Among other things, Celsius obtains borrower information, assesses their credit risks, tailors terms of the loans, including any required collateral, in accordance with the borrower's risk profile, monitors counterparty risk after the loan has been funded, liquidates posted collateral where needed, and services the loans.

21. Celsius uses the income it receives from these activities to pay interest to EIP customers and for operating expenses, among other uses.

22. Celsius requires EIP customers to agree to the commingling and deployment of their virtual currencies in this manner in Celsius' Terms of Service. Celsius customers agree to relinquish all rights and title to the virtual currency and to allow Celsius to "pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of [the virtual currency], separately or together with other

property,...and to use or invest such [virtual currency].” EIP customers have no control over how their virtual currencies are deployed by Celsius.

Material Misleading Statements and Omissions in Offer and Sale of EIPs

23. In offering the EIPs to Washington residents, Celsius failed to fully disclose material aspects of its business and the EIP including, but not limited to, the types of trading and investment activities that it engages in using EIP virtual currencies, the identities and creditworthiness of those who borrow EIP virtual currencies, the amount of virtual currencies used in each income-generating activity, and Celsius financial statements or other information reflecting its financial state.

24. In addition, Celsius’ statements that it provides 80% of its revenue to its customers is misleading, as EIP customers are only entitled to earning interest at set rates determined by Celsius.

Need For Further Investigation

25. The Securities Division is continuing to investigate the matter alleged herein to determine the full extent of the violations of the Securities Act that have occurred in this matter. The Securities Division may amend this Statement of Charges in the future to reflect any additional factual allegations and/or violations as a result of the continuing investigation.

Registration Status

26. Celsius Network Inc. is not currently registered to sell the Earned Interest Program in the state of Washington and has not previously been so registered, nor has it filed a claim of exemption from registration.

27. Celsius Network Inc. is not currently registered as a broker-dealer in the state of Washington and has not previously been so registered.

28. Celsius Network Limited is not currently registered to sell the Earned Interest Program in the state of Washington and has not previously been so registered, nor has it filed a claim of exemption from

1 registration.

2 29. Celsius Network Limited is not currently registered as a broker-dealer in the state of
3 Washington and has not previously been so registered.

4 30. Celsius US Holding LLC is not currently registered to sell the Earned Interest Program in the
5 state of Washington and has not previously been so registered, nor has it filed a claim of exemption from
6 registration.

7 31. Celsius US Holding LLC is not currently registered as a broker-dealer in the state of
8 Washington and has not previously been so registered.

9 32. Celsius Network LLC is not currently registered to sell the Earned Interest Program in the
10 state of Washington and has not previously been so registered, nor has it filed a claim of exemption from
11 registration.

12 33. Celsius Network LLC is not currently registered as a broker-dealer in the state of Washington
13 and has not previously been so registered.

14 34. Celsius Lending LLC is not currently registered to sell the Earned Interest Program in the state
15 of Washington and has not previously been so registered, nor has it filed a claim of exemption from
16 registration.

17 35. Celsius Lending LLC is not currently registered as a broker-dealer in the state of Washington
18 and has not previously been so registered.

19 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

20 **CONCLUSIONS OF LAW**

21 1. The offer and/or sale of the Earned Interest Program described above constitutes the offer
22 and/or sale of a security as defined in RCW 21.20.005(14) and (17).
23

2. Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC violated RCW 21.20.140, the securities registration section of the Securities Act of Washington, by offering and/or selling securities for which no registration is on file with the Securities Administrator.

3. Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC violated RCW 21.20.040, the licensee registration section of the Securities Act of Washington, by offering and/or selling said securities while not being registered as a broker-dealer in the state of Washington.

4. Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC violated RCW 21.20.010, the anti-fraud section of the Securities Act of Washington, by making untrue statements of material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC, and their agents and employees, to each permanently cease and desist from violating RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC shall be jointly and severally liable for and for and shall pay a fine of \$100,000.

//

1 **NOTICE OF INTENT TO CHARGE COSTS**

2 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law,
3 the Securities Administrator intends to order that Celsius Network Inc., Celsius Network Limited, Celsius
4 US Holding LLC, Celsius Network LLC, and Celsius Lending LLC shall be jointly and severally liable for
5 and for and shall pay the costs, fees, and other expenses incurred in the administrative investigation and
6 hearing of this matter, in an amount not less than \$6,500.

7 **AUTHORITY AND PROCEDURE**

8 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject
9 to the provisions of Chapter 34.05 RCW. Celsius Network Inc., Celsius Network Limited, Celsius US
10 Holding LLC, Celsius Network LLC, and Celsius Lending LLC may each make a written request for a
11 hearing as set forth in the Notice of Opportunity for Hearing accompanying this Order. If a respondent does
12 not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above
13 Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and
14 desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs
15 sought against that respondent.

16
17 SIGNED and ENTERED this 20th day of October, 2021.

18
19
20 

21 _____
22 William M. Beatty
23 Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Huong Lam
Financial Legal Examiner

STATEMENT OF CHARGES

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

TRAVIS J. ILES
SECURITIES COMMISSIONER

Exhibit Q



CLINTON EDGAR
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

E. WALLY KINNEY
CHAIR

KENNY KONCABA
MEMBER

ROBERT BELT
MEMBER

MELISSA TYROCH
MEMBER

EJIKE E OKPA II
MEMBER

SOAH DOCKET NO. 312-22-0160

TEXAS STATE SECURITIES BOARD,
Petitioner

v.

CELSIUS NETWORK, INC., CELSIUS
NETWORK LIMITED, CELSIUS US
HOLDING, LLC, CELSIUS NETWORK,
LLC, AND CELSIUS LENDING, LLC
Respondents

§ BEFORE THE STATE OFFICE

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OF

ADMINISTRATIVE HEARINGS

CELSIUS NETWORK INC.

Service by (1) certified mail, return receipt requested, addressed to 221 River Street, 9th Floor, Hoboken, New Jersey 07030; (2) certified mail, return receipt requested, addressed to The Harley Building, 77-79 New Cavendish Street, London W1W 6XB, United Kingdom; (3) certified mail, return receipt requested, addressed to its counsel John Sikora, Jr., Partner, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611; and (4) electronic mail to its counsel, John Sikora, Jr., at john.sikora@lw.com.

CELSIUS NETWORK LIMITED

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NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will commence at **9:00 AM on FEBRUARY 14, 2022**, before an Administrative Law Judge. The hearing is being held via videoconference for the purpose of determining whether to issue a proposal for decision for the entry of a CEASE AND DESIST ORDER against Celsius Network, Inc., Celsius Network Limited, Celsius US Holding, LLC, Celsius Network, LLC, and Celsius Lending, LLC (herein collectively referred to as the “Celsius Network” or as “Respondents”).

This hearing will be held pursuant to the Securities Act, Tex. Rev. Civ. Stats. Ann. arts. 581-1-581-45 (the “Securities Act”), the Rules and Regulations of the State Securities Board, 7 Tex. Admin. Code §§101.1-139.27 (2019) (Tex. State Sec. Bd.) (the “Board Rules”), the Administrative Procedure Act, Tex. Gov’t Code Ann. §§2001.001-2001.902 (the “Administrative Procedure Act”), and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (2019) (State Ofc. of Admin. Hearings) (the “SOAH Rules”).

CELSIUS AND THE CRYPTO INTEREST ACCOUNTS

1. Celsius Network, Inc. is incorporated in Delaware and owns several subsidiaries including an approximately 82.81% interest in Celsius Network Limited.
2. Celsius Network Limited is incorporated in England and Wales and wholly owns many subsidiaries, including Celsius US Holding, LLC.

3. Celsius US Holding, LLC is the holding company for Celsius Network's subsidiaries in the United States and two of its wholly owned subsidiaries are Celsius Network, LLC and Celsius Lending, LLC.
4. Celsius Network, LLC is a Celsius Network company incorporated in Delaware and is the subsidiary providing Celsius Network's user-facing services and activities for customers in the United States.
5. Celsius Lending, LLC is a Celsius Network company incorporated in Delaware and is the subsidiary providing consumer fiat and stablecoin loans secured by cryptocurrency deposits to Celsius Network's customers in the United States.
6. The Celsius Network is a network of affiliated financial services companies that generate revenue through cryptocurrency trading, lending, and borrowing, as well as engaging in propriety trading, mining, and other types of transactions.
7. Respondents are, in part, illegally funding their lending operations, proprietary trading, and other revenue generating activities through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts.
8. Respondents refer to the unregistered cryptocurrency interest-earning accounts as Celsius Network's "Earn Rewards" program ("Celsius Earn Interest-Bearing Account").
9. Respondents permit Texans and other investors at least eighteen years old to apply to purchase the Celsius Earn Interest-Bearing Account through the Celsius Network's website or smartphone application.
10. Investors open accounts by transferring eligible cryptocurrency to the Celsius Network to invest in Celsius Earn Interest-Bearing Accounts. Investors relinquish control over their cryptocurrency and the Celsius Network takes full legal and beneficial ownership of the investors' cryptocurrency.
11. The Celsius Network is free to use investors' cryptocurrencies consistent with the terms of the Celsius Earn Interest-Bearing Accounts, including commingling cryptocurrencies with cryptocurrencies deposited by other investors, investing in traditional financial assets and cryptocurrency assets, lending those cryptocurrencies to institutional and corporate borrowers, and engaging in any other activities at the Celsius Network's discretion.
12. In exchange for consideration received in the present, the Celsius Network is promising to pay lucrative interest rates in the future. The Celsius Network is currently promoting the interest rates through its website, which recently advertised an annual return of up to 17.78 percent on certain cryptocurrencies for retail

investors - well in excess of the rates currently being offered for short-term, investment grade, fixed income securities or for bank savings accounts.

13. The Celsius Network sets the interest rates it pays on various cryptocurrencies in advance and on a periodic basis. The Celsius Network sets its interest rates based on various considerations and prioritizing the Celsius Network's need for particular types of cryptocurrencies.
14. The Celsius Network incentivizes smaller investors to invest in the Celsius Earn Interest-Bearing Accounts by paying higher rates of interest on smaller investments of principal for certain cryptocurrencies. As an example, the Celsius Network has paid higher rates of interest on investments up to 1 Bitcoin and up to 100 Ethereum and lower rates of interest on investments of more than 1 Bitcoin and more than 100 Ethereum.
15. The accrual of interest begins "as soon as any funds are credited to [an investor's] Celsius account." Investors transfer cryptocurrencies to the Celsius Network and the transaction is timestamped with the hour, minute, and second. Interest is payable on or around the first business day of each week.
16. In the United States, interest payments are denominated in the same type of cryptocurrency originally invested. In other jurisdictions, subject to certain conditions, the Celsius Network may make interest payments denominated in its native digital token, CEL.
17. Retail investors may withdraw their cryptocurrencies at any time, subject to certain processing times.
18. As of September 3, 2021, the Celsius Network claims it has more than \$24,000,000,000 in assets under management, more than 1,000,000 community members, and more than \$8,200,000,000 in loans processed.
19. As of August 18, 2021, the Celsius Network had 348,158 active users worldwide invested in Celsius Earn Interest-Bearing Accounts with global assets under management exceeding \$12,500,000,000. As of the same date, the Celsius Network had 139,054 active users in the United States invested in Celsius Earn Interest-Bearing Accounts with United States-based assets under management exceeding \$7,000,000,000.
20. As of June 9, 2021, the Celsius Network has more than \$344,000,000 in assets under management from more than 9,000 Texas residents and businesses.

CELSIUS' API PARTNER PROGRAM

21. The Celsius Network offers an Application Programming Interface ("API") that allows certain institutional users, known as Celsius "API Partners," ("Celsius API")

Partners") to integrate with the Celsius Network's platform. Celsius API Partners can then offer and sell the unregistered Celsius Earn Interest-Bearing Accounts to their clients.

22. The Celsius Network provides two different types of accounts whereby Celsius API Partners' clients can access Celsius Earn Interest-Bearing Accounts called segmented accounts ("Segmented API Accounts") and omnibus accounts ("Omnibus API Accounts").
23. Investors who invest in Celsius Earn Interest-Bearing Accounts through a Celsius API Partner's Segmented API Account or Omnibus API Account are subject to the same rights, benefits, terms, and conditions as investors who invest in Celsius Earn Interest-Bearing Accounts directly from the Celsius Network.
24. Segmented API Accounts allow Celsius API Partners to offer Celsius Earn Interest-Bearing Accounts through their own platforms. For Segmented API Accounts:
 - A. Investors create their own Celsius Network accounts through the Celsius API Partner's platform;
 - B. The Celsius Network performs the onboarding and customer due diligence for investors from Celsius API Partners;
 - C. Investors must accept the Celsius Network's terms and conditions; and
 - D. The Celsius API Partners receive a fee based on the percentage of interest payable by the Celsius Network to the investor.
25. Omnibus API Accounts allow Celsius API Partners to offer and sell Celsius Earn Interest-Bearing Accounts to their investors on an aggregated basis. For Omnibus API Accounts:
 - A. The Celsius API Partner maintains one account with the Celsius Network where it transfers the aggregated funds of its investors;
 - B. The Celsius Network performs no customer due diligence on the Celsius API Partner's investors, has no relationship with the investors, and does not know their identities;
 - C. The Celsius Network's only contractual relationship is with the Celsius API Partner; and
 - D. The Celsius Network pays a fee to the Celsius API Partner which is in addition to the interest paid on investments in the Celsius Earn Interest-Bearing Accounts.

THE LACK OF REGISTRATION AND PUBLIC PROTECTIONS

26. Respondents are not licensed as a Money Service Business in Texas to conduct currency exchange or money transmission activities defined by Chapter 151 of the Texas Finance Code.
27. Respondents are not licensed with the United States Securities and Exchange Commission. Additionally, they are not registered with the Texas State Securities Board to offer or sell securities in Texas, as required by Section 12 of the Securities Act, and the Celsius Earn Interest-Bearing Accounts are not registered or permitted for sale in Texas, as required by Section 7 of the Securities Act. Accordingly, Respondents are violating laws designed to protect Texans.
28. The Celsius Earn Interest-Bearing Accounts are also not protected by Securities Investor Protection Corporation, otherwise known as the SIPC, a federally mandated, non-profit, member-funded United States corporation created under the Securities Investor Protection Act of 1970 that mandates membership of most US-registered broker-dealers.
29. The Celsius Earn Interest-Bearing Accounts are also not insured by the Federal Deposit Insurance Corporation, otherwise known as the FDIC, an agency that provides deposit insurance to depositors in the United States, or the National Credit Union Administration, otherwise known as the NCUA, an agency that regulates and insures credit unions.

THE UNDISCLOSED RISKS

30. Respondents are not disclosing material information necessary for investors to make an informed decision, including critical material information about the risks associated with purchasing its unregistered securities.
31. This material information includes, without limitation, the amount of money or cryptocurrency devoted to permissive uses, the identity, nature, and creditworthiness of borrowers, the type and nature of transactions involving digital assets, equities, options, and futures, the risks associated with individual digital assets, equities, options, and futures, the profits and/or losses derived from transactions, and financial information reflecting the assets and liabilities and cashflow.

THE VIOLATIONS OF THE SECURITIES ACT

32. The Securities Act regulates the offer and sale of securities in Texas.
33. Section 4.A of the Securities Act defines the term securities to include traditional products such as stocks and bonds. The statute also broadly defines the term securities to include investment contracts, notes, and evidences of indebtedness

- broad categories of products that capture the endless number of unique and innovative investment schemes continuously introduced into the market.
34. The mere fact an investment is tied to a cryptocurrency, blockchain technology, or some type of digital asset does not remove it from securities regulation if it constitutes an investment contract, note, evidence of indebtedness, or other type of security.
35. Based on the information and allegations set forth herein, the Celsius Earn Interest-Bearing Accounts constitute investment contracts, notes, or evidences of indebtedness regulated as securities as that term is defined by Section 4.A of the Securities Act.
36. Based on the information and allegations set forth herein, Respondents are violating Section 7 of the Securities Act by offering and selling securities in Texas that are not registered or permitted for sale in Texas.
37. Based on the information and allegations set forth herein, Respondents are also violating Section 12 of the Securities Act by offering and selling securities in Texas without first being registered as dealers or agents.

THE NOTIFICATION AND REQUEST FOR COMPLIANCE

38. On or about May 14, 2021, the Enforcement Division of the State Securities Board (the “Enforcement Division”) notified Respondents that Respondents may have offered securities in Texas that may not comply with the Securities Act.
39. The Enforcement Division also explained the regulation of the securities market in Texas, including the identification of laws that require the registration of securities, the registration of dealers and agents, and the truthful disclosure of all known material facts.
40. Nevertheless, Respondents have continued to offer the Celsius Earn Interest-Bearing Accounts to Texans in violation of Sections 7 and 12 of the Securities Act.

REMEDIES

41. The Enforcement Division is praying for a proposal for decision for the entry of an order that Respondents immediately cease and desist from violating Sections 7 and 12 of the Securities Act.
42. Although this Notice of Hearing is praying for a proposal for decision for an order to cease and desist from violating Sections 7 and 12 of the Securities Act, nothing set forth herein shall preclude the Enforcement Division, consistent with applicable law and rule, from pursuing other enforcement remedies, such as filing an amended Notice of Hearing praying for a proposal for decision that orders the

assessment of an administrative fine or the payment of a refund/restitution to Texans.

EXISTING CLIENT ACCOUNTS

43. This Notice of Hearing, and the prayers contained herein, do not preclude Respondents from paying interest or returns to existing clients, refunding principal to investors consistent with the terms of the Celsius Earn Interest-Bearing Accounts, or otherwise lawfully dealing with existing clientele.

THE HEARING

44. The hearing will be held before the State Office of Administrative Hearings. It will commence at **9:00 AM on FEBRUARY 14, 2022.**
45. The State Office of Administrative Hearings may conduct the hearing via Zoom. Zoom is a video conferencing platform for meetings held through the internet. The State Office of Administrative Hearings will provide instructions for accessing the hearing via Zoom.
46. At the hearing, the Enforcement Division will present testimony and other admissible evidence in support of its prayer for a proposal for decision for the entry of a CEASE AND DESIST ORDER against Respondents. Respondents will be afforded the right to present such testimony and other evidence related thereto.

LEGAL NOTIFICATIONS

47. Legal authority and jurisdiction for this matter exist under Section 23 of the Securities Act, Section 2003.021(b) of the Texas Government Code and Rule 155.51 of the SOAH Rules.
48. **IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE. THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE SECURITIES COMMISSIONER AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, AND ALSO SERVED ON THE STAFF OF THE STATE SECURITIES BOARD. IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED AND SERVED, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

- 49. PARTIES THAT ARE NOT REPRESENTED BY AN ATTORNEY MAY OBTAIN INFORMATION REGARDING CONTESTED CASE HEARINGS ON THE PUBLIC WEBSITE OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AT WWW.SOAH.TEXAS.GOV, OR IN PRINTED FORMAT UPON REQUEST TO THE STATE OF ADMINISTRATIVE HEARINGS.**
50. Respondents may access the Securities Act and the Board Rules through the website of the State Securities Board at www.ssb.texas.gov. Respondents may also access the SOAH Rules through the website of the State Office of Administrative Hearings at www.soah.texas.gov and the Administrative Procedure Act through Texas Legislature Online at statutes.capitol.texas.gov.
51. The Securities Act authorizes the Texas State Securities Board to pursue administrative, civil, or criminal enforcement cases. The Securities Act and Board Rules also authorize the Texas State Securities Board to share information with and refer cases to other governmental agencies with administrative, civil, or criminal jurisdiction. These other governmental agencies include, without limitation, state and federal regulatory agencies, law enforcement agencies and prosecutors' offices. Therefore, any information provided, filed, or otherwise supplied by Respondents may be shared with these other government agencies and/or used in other cases. Whether the Texas State Securities Board makes its files available to other governmental agencies or refers cases to other government agencies is typically confidential pursuant to Section 28 of the Texas Securities Act.
52. Pursuant to Board Rule 105.13, the Enforcement Division is now respectfully requesting and will continue to respectfully request the State Office of Administrative Hearings order all costs charged to the Texas Securities Board by any court reporting service be assessed against Respondents.
53. Persons with disabilities who need special accommodations at the hearing, whether held at the State Office of Administrative Hearings or through an audio or video conferencing platform, should contact the Docketing Department of the State Office of Administrative Hearings at 512-475-4993 at least one week prior to the hearing.

CONTACT AND FILING INFORMATION

54. The Enforcement Division is represented by Rachel Anderson Rynders, Attorney, Enforcement Division. Ms. Anderson Rynders' State Bar Card Number is 24103132, her work address 208 E. 10th Street, 5th Floor, Austin, Texas 78701, her telephone number is 512-305-8392, her facsimile number is 512-355-0404, and her email address is rrynders@ssb.texas.gov.

55. The Docketing Office of the State Office of Administrative Hearings is located at 300 W. 15th Street, Austin, Texas 78701, and it may be contacted by telephone at 512-745-3445 and by facsimile at 512-475-4994.
56. The State Office of Administrative Hearings may conduct the hearing via audio or video conferencing. The audio and video conferencing platforms are secure, free meetings held telephonically or through the internet. The State Office of Administrative Hearings will provide instructions for all hearings held telephonically or through a video conferencing platform.
57. Persons with disabilities who need special accommodations at the hearing, whether held at the State Office of Administrative Hearings or through an audio or video conferencing platform, should contact the Docketing Department of the State Office of Administrative Hearings at 512-475-4993 at least one week prior to the hearing.
58. Pursuant to Board Rule 105.8, all documents filed by any party, other than business records and transcripts, must be contemporaneously served upon Marlene Sparkman, General Counsel and Securities Commissioner's Representative. Ms. Sparkman's address is 208 E. 10th Street, 5th Floor, Austin, Texas 78701, her telephone number is 512-305-8300, her facsimile number is 512-305-8336, and her email address is msparkman@ssb.texas.gov.

Signed on this, the 17th day of September
2021

By: /s/ Joe Rotunda
Joe Rotunda
State Bar No. 24029808
Division Director, Enforcement Division
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701
T: 512-305-8392
F: 512-355-0404
E: jrotunda@ssb.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this, the 17th day of September 2021, true and correct copies of this Notice of Hearing are being served on the following parties through the means set forth below:

MARLENE SPARKMAN

General Counsel for the State Securities Board and the Securities Commissioner's Representative, is being served by electronic mail addressed to msparkman@ssb.texas.gov.

CELSIUS NETWORK INC.

Service by (1) certified mail, return receipt requested, addressed to 221 River Street, 9th Floor, Hoboken, New Jersey 07030; (2) certified mail, return receipt requested, addressed to The Harley Building, 77-79 New Cavendish Street, London W1W 6XB, United Kingdom; (3) certified mail, return receipt requested, addressed to its counsel John Sikora, Jr., Partner, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611; and (4) electronic mail to its counsel, John Sikora, Jr., at john.sikora@lw.com.

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CELSIUS LENDING, LLC

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Kingdom; (3) certified mail, return receipt requested, addressed to its counsel John Sikora, Jr., Partner, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611; and (4) electronic mail to its counsel, John Sikora, Jr., at john.sikora@lw.com.

By: /s/ Joe Rotunda
Joe Rotunda
State Bar No. 24029808
Director, Enforcement Division
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701
T: 512-305-8392
F: 512-355-0404
E: jrotunda@ssb.texas.gov

Exhibit R

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
THE PEOPLE OF THE STATE OF NEW YORK :
By LETITIA JAMES, Attorney General of the State of :
New York, : Index No.:
:
Plaintiff, : **COMPLAINT**
:
-against- :
:
ALEX MASHINSKY, :
:
Defendant. :
----- X

Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the
State of New York (“OAG” or “Plaintiff”), alleges as follows:

PRELIMINARY STATEMENT

1. Between 2018 and at least June 2022, Defendant Alex Mashinsky (“Mashinsky”
or “Defendant”) engaged in a scheme to defraud hundreds of thousands of investors, including
more than 26,000 New Yorkers, by using false and misleading representations to induce them to
deposit billions of dollars in digital assets with his cryptocurrency lending company Celsius
Network LLC (together with its parent and related entities, “Celsius”), which he founded and led
as chief executive officer. Mashinsky promoted Celsius as a safe alternative to banks while
concealing that Celsius was actually engaged in risky investment strategies.

2. Mashinsky was the public face of Celsius. In hundreds of interviews, blog posts,
and livestreams, Mashinsky promised investors high yield with minimal risk, assuring them that
their digital assets would be as safe as money in a bank and that Celsius would always act in
investors’ best interest. Touting himself and his company as a modern-day Robin Hood,
Mashinsky boasted that Celsius “deliver[s] yield...to the people who would never be able to do it

themselves, [and] we take it from the rich....” Mashinsky promised investors some of the highest yields in the industry, as high as 17%. He told investors that Celsius would generate sustainably high returns by making low-risk collateralized loans to first-tier institutions and cryptocurrency exchanges as well as overcollateralized loans to retail borrowers.

3. These promises were false – but proved wildly popular. By early 2022, Mashinsky’s promotional efforts had helped Celsius amass \$20 billion in digital assets from investors all over the world. But as Celsius grew larger, it struggled to generate enough revenue to pay the promised yields on investors’ deposits. In search of revenue, Celsius moved into significantly riskier investments, extending hundreds of millions of dollars in uncollateralized loans, and investing hundreds of millions of dollars in unregulated decentralized finance platforms.

4. When Celsius suffered losses on risky investments, Mashinsky failed to disclose these losses to investors. Instead, he continued to promise and pay high yields to attract new deposits and to tell investors to keep their cryptocurrency with Celsius which, he continued to promise, would invest it safely and pay better returns than the banks. In one video Mashinsky claimed that: “All you need to do to become a millionaire... is to HODL,” using a popular industry term that originated as a misspelling of the word “hold” and has come to mean “hold on for dear life.” The term is often used to discourage investors from selling (or, in the case of Celsius, withdrawing their cryptocurrency from the platform) during market declines or volatility.

5. But as cryptocurrency markets plummeted in the spring of 2022, Celsius’s unsustainable business model began to unravel. By May 2022, Celsius’s liabilities exceeded its diminishing assets by hundreds of millions of dollars, and investor withdrawals were

accelerating. Rather than disclose Celsius's dire situation, Mashinsky doubled down. He repeatedly and falsely assured investors that Celsius was stronger than ever, that investor assets were safe at Celsius, and that Celsius had billions of dollars in liquidity to cover anyone who wanted to withdraw their assets. In late May 2022, Mashinsky was still actively recruiting new investors, urging them to disregard all criticism of Celsius from "naysayers and haters," to "ignore the FUD" (a popular crypto term that stands for fear, uncertainty, and doubt), and continued to encourage existing investors to HODL.

6. On June 12, 2022, Celsius froze customer withdrawals. A month later, on July 13, 2022, Celsius filed for bankruptcy, revealing that its liabilities exceeded its assets by more than one billion dollars.

7. The collapse of Celsius left many individuals in a state of desperation and financial ruin, which they described in letters to the bankruptcy court and the OAG. One New York resident mortgaged two properties to invest with Celsius. A father of three lost his life savings of more than \$375,000. A disabled veteran lost his investment of \$36,000, which had taken him nearly a decade to save up. Another disabled citizen, who depended upon government assistance to supplement his \$8 per hour income, lost his entire investment and was left feeling "humiliated and defeated."

8. Many investors wrote that they were persuaded to invest in Celsius by Mashinsky's false promises that Celsius would keep their assets safe and generate high yields through low-risk investments.

9. Mashinsky's scheme to defraud, including his misrepresentations and omissions, constitutes fraudulent practice in violation of New York General Business Law ("GBL") Article 23-A, §§ 352 *et seq.* (the "Martin Act"), as well as repeated fraudulent or illegal acts or persistent

fraud or illegality in the carrying on, conducting or transacting of business in violation of New York Executive Law § 63(12). Mashinsky also failed to register as a securities dealer and salesperson and as a commodities broker-dealer and commodities salesperson in violation of the registration provisions of the Martin Act, GBL § 359-e and attendant regulations.

10. This action seeks, *inter alia*, an order permanently enjoining Mashinsky from engaging in fraudulent, deceptive, and illegal acts in violation of the Martin Act and Executive Law; from engaging in any business relating to the issuance, advertisement, or sale of securities or commodities in New York; from serving as director or officer of any company doing business in New York; and directing Mashinsky to pay damages, restitution, and disgorgement.

PARTIES

11. Plaintiff Letitia James, the Attorney General of the State of New York, is authorized to bring this action and to assert the causes of action set forth below in the name and on behalf of the People of the State of New York pursuant to the Martin Act and Executive Law § 63(12).

12. The Martin Act authorizes the Attorney General to commence a civil action for restitution, damages and other relief in connection with fraudulent practices in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities within or from New York State. Executive Law § 63(12) authorizes the Attorney General to seek restitution, damages, injunctive relief, and costs when any person has engaged in repeated fraudulent or illegal acts or has otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transacting of business.

13. Defendant Alex Mashinsky is a co-founder and the former Chief Executive Officer (“CEO”) of Celsius Network LLC, a Delaware limited liability company with its principal office in Hoboken, New Jersey. Mashinsky controls Celsius Network LLC through his 83.7% equity stake in Celsius Network Inc., a Delaware corporation, which is a majority shareholder (65.32%) of Celsius Network Limited, which wholly owns Celsius US Holding LLC, which is in turn the sole owner of Celsius Network LLC. All these entities are debtors in the Celsius Network LLC bankruptcy proceedings in the Southern District of New York, Case No. 22-10964 (MG). Mashinsky conducted business from and resides in New York, New York.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendant, and authority to grant the relief requested pursuant to the Martin Act and Executive Law § 63(12).

15. Pursuant to C.P.L.R. § 503, venue is proper in New York County because the OAG’s office is located in this county, Defendant resides in this county, and a substantial part of the conduct giving rise to the claims occurred in this county.

FACTUAL ALLEGATIONS

I. General Background on Celsius and Mashinsky’s Role as Promoter and CEO of Celsius

16. Mashinsky launched Celsius in March 2017 in order to “radically disrupt a broken system...to help everyday people all around the world attain their financial dreams” and engage in the cryptocurrency “revolution.” Cryptocurrencies or virtual currencies, such as Bitcoin and Ether, are digital assets that reside on an electronic ledger, called a blockchain. Digital assets are commodities under the Martin Act.

17. Celsius claimed it was different from traditional financial institutions because it was “democratized” and “[b]uilt on the belief that financial services should only do what is in the best interests of the community.” A page on Celsius’s website titled “Why Trust Celsius” claimed that a “critical part” of the company’s mission was to “provide fair and transparent services.”

18. As CEO and majority owner of Celsius Network LLC, Mashinsky had access to and control over Celsius’s overall operations and corporate strategy. He was familiar with the day-to-day operations, business and financial affairs, and books and records of Celsius.

A. Celsius’s Products and Services

19. Celsius offered its customers a variety of cryptocurrency-related products and services, which were accessible through Celsius’s website and mobile application (“app”). To create a Celsius account, investors digitally signed Celsius’s user agreement and acknowledged its terms of use.

20. Investors could then transfer cryptocurrency from their own digital wallet into their Celsius account, purchase cryptocurrency through the Celsius app using dollars, or purchase cryptocurrency through Celsius using other cryptocurrencies. After investors transferred cryptocurrency to Celsius, they could earn interest on that cryptocurrency or use it as collateral to borrow against.

21. Celsius’s flagship product was the “Earn” program, which allowed investors to earn interest on cryptocurrency deposited into an earned interest account (“EIA”) at Celsius. Celsius promoted EIAs by advertising some of the highest yields in the market, up to 17% per year. Mashinsky explained that the rates were “subject to change on a weekly basis as they are

calculated by the weekly demand for each coin combined with our promise that up to 80% of our profits are returned to the depositors.”

22. EIA investors transferred their cryptocurrency to Celsius, which then pooled the deposited digital assets and invested them in various revenue-generating activities. Celsius had full control over its use of EIA assets, while investors had no discretion or control over Celsius’s investment decisions. EIAs constituted securities under the Martin Act.

23. Mashinsky described the EIA model as “sleep to earn,” where investors merely deposited their virtual currencies and let Celsius do all the work to generate returns. As Mashinsky put it, “you don’t have to do anything, you just go to sleep, and every Monday we pay you yield.”

24. At least 26,390 New York residents registered as users with Celsius and more than 4,000 of those investors enrolled in EIAs. As of December 31, 2021, New Yorkers had deposited a total of approximately \$440 million on the Celsius platform.

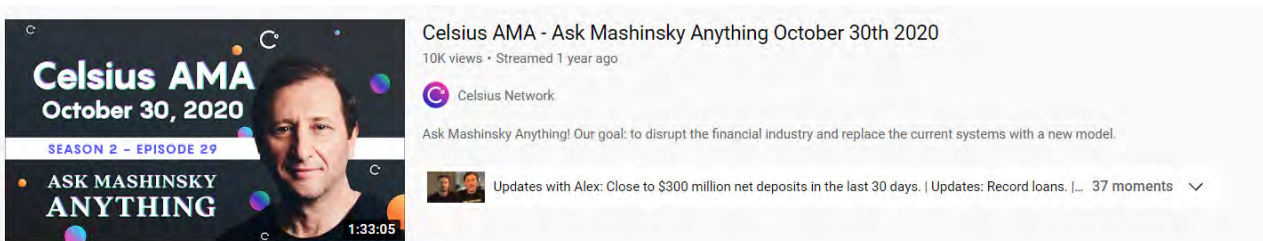
B. Mashinsky Promoted Celsius and Solicited Investors

25. Mashinsky was Celsius’s primary promoter and spokesman, appearing regularly in interviews, at cryptocurrency conferences, and on social media, including Twitter and YouTube. Many of Mashinsky’s YouTube and other interviews were and are accessible directly from the Celsius website. From 2018 through June 2022, Mashinsky promoted Celsius during his weekly “Ask Mashinsky Anything” videos (“AMAs”), which he broadcast on Fridays, often from his New York City apartment, the self-described “Crypto Castle.” Investors used a chat function to submit questions and comments, which Mashinsky would answer live.

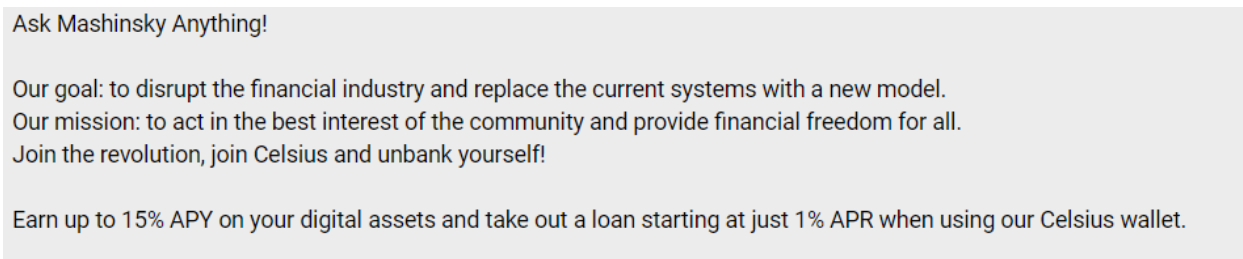
26. By June 2022, Mashinsky had recorded 179 AMA episodes, most of which were about an hour long, and each of which was seen by thousands of viewers. Many of the AMAs

were posted on Celsius's website, as well as on YouTube, and were accessible at least until June 12, 2022, when Celsius froze investor accounts.

27. The videos often contained a picture and descriptions similar to the below:



28. From 2018 through at least 2020, the online descriptions of Mashinsky's videos included his promise "to act in the best interest" of investors.



29. AMAs were accompanied by a solicitation to invest with Celsius and included links that would take viewers directly from Mashinsky's video to Celsius's website and Celsius's app.

30. Mashinsky cast himself as a visionary and developed a loyal following. Many of his slogans, such as "unbank the banked and bank the unbanked" and "banks are not your friends," were well-known throughout the cryptocurrency community. He often wore t-shirts branded with these slogans during his AMAs videos and in other public appearances.

31. Mashinsky lured investors to Celsius by promising that Celsius would keep their cryptocurrency assets safe and would pay outsized yields by using those assets to make low-risk loans. When critics claimed that it was impossible to generate the high returns Celsius promised

investors without taking “tremendous” risks with investors’ assets, Mashinsky continued to falsely insist that investing with Celsius was safe. Mashinsky dismissed the criticism that Celsius was taking risks with investors’ digital assets, asking his followers to ignore the “FUD” (fear, uncertainty, and doubt) and to unfollow critics on Twitter.

II. Mashinsky Misrepresented that Investor Assets at Celsius Were as Safe as Money in a Bank

32. Mashinsky drew investors to the Celsius platform by repeatedly and misleadingly stating that digital assets deposited with Celsius were as safe as – or even safer than – money deposited in a traditional bank.

33. In a March 7, 2019, interview at the NASDAQ MarketSite in Times Square, Mashinsky claimed that money deposited with Celsius was “as safe as it is with the bank, which is the alternative, it’s just that [Celsius] network is always acting in your best interest.” In a December 3, 2020, YouTube interview, Mashinsky stated that Celsius generated revenue by lending assets in a way “similar to what banks do.” On August 2, 2021, Mashinsky represented that Celsius was in fact safer than a bank, claiming in a YouTube interview that “we have less risk, we have much less risk [than banks].”

34. Mashinsky’s repeated statements presenting Celsius as safe as or safer than a bank were materially false and misleading. Banks are highly regulated by state and federal government agencies and undergo regular examinations. They are subject to capital requirements and are regularly tested for safety and soundness. State and federal regulators have robust systems in place to ensure orderly liquidations of failing institutions that minimize disruptions to customer services and limit customer losses. Many banks may access the Federal Reserve System for discounted liquidity to prevent potential failures. Bank customers are also protected by the Federal Deposit Insurance Corporation, which provides deposit insurance for

individual accounts up to \$250,000 as protection from losses due to bank failure. Because Celsius was not a bank, neither Celsius nor its customers had any hope of availing themselves of any of these protections when Celsius in fact failed.

35. Mashinsky also compared Celsius's lending of investor cryptocurrency to securities lending by securities broker-dealers, such as Schwab, Fidelity, Blackrock, or State Street. For example, on April 26, 2021, in a YouTube interview, Mashinsky stated that "the only difference between [securities] lending... and Celsius, which is digital asset lending, is that Celsius gives 80% of that to the depositor, to the user...."

36. But that was not the only difference. Broker-dealers, like banks, are subject to regulatory scrutiny. They generally must be members of the Financial Industry Regulatory Authority and must be registered either with the United States Securities and Exchange Commission or with a state securities regulator. Celsius was not registered with any of these entities as a broker-dealer. Furthermore, assets held with broker-dealers benefit from insurance provided by the Securities Investor Protection Corporation, which covers investors for up to \$500,000 in securities and up to \$250,000 in uninvested cash against losses due to a broker-dealer's insolvency. In stark contrast, Celsius's investor deposits were not covered by any insurance.

37. Mashinsky further misled investors by promising that Celsius would take full responsibility for safeguarding investor assets, including from any shortfalls or loss of value caused by Celsius's use or "deployment" of investors' cryptocurrency assets. In his December 10, 2021, AMA, Mashinsky declared that "Celsius takes full responsibility if anything goes bad" and claimed that if "something bad happens with the Celsius deployment ... Celsius [is] standing behind it." At the same time, Mashinsky frightened investors into staying with Celsius by stating

that competitors' platforms could not be relied upon "when they ... blow up... or when they don't perform or they don't deliver...." In the end, however, it was Celsius that fell quickly and neither performed nor delivered on its promises.

III. Mashinsky Misled Investors About the Number of Active Users of Celsius

38. Both Mashinsky's scheme and Celsius's sustainability depended on wide public acceptance of Celsius's business model and the willingness of investors to entrust their digital assets to Celsius. In a blog post on March 12, 2019, Mashinsky explained: "The more people that deposit, the more profits there are to distribute to the community, and THAT is a sustainable and scalable promise." To increase assets available for investment and for liquidity, Celsius needed a continuous supply of new investors and new deposits. And the more losses Celsius sustained through risky investment of existing deposits, the more it needed the new deposits to plug holes in its balance sheet.

39. Mashinsky often exaggerated the number of Celsius's investors, making Celsius appear significantly more popular than it actually was. In a YouTube interview on November 17, 2021, for example, Mashinsky, stated "we have a million and a half customers...they hold over 25 billion dollars' worth of digital currencies...." In another YouTube interview on June 1, 2022, Mashinsky claimed: "we have a community of almost two million people...."

40. While Celsius had approximately 1.7 million registered users as of July 2022, most were not active customers. In fact, from 2019 through 2022, roughly two-thirds of registered U.S. Celsius users held less than *one dollar's worth* of cryptocurrency in their Celsius accounts. For example, by June 17, 2022, Celsius had 584,192 registered U.S. users; of those, 386,294 (66%) had an account balance of less than one dollar. Mashinsky's claim of nearly two

million users was materially misleading because Celsius was not as widely accepted – or used – as Mashinsky led his investors to believe.

IV. Mashinsky Lured Investors to Celsius by Misrepresenting How Investor Assets Would be Deployed and Concealing the Risks of Those Deployments

41. Mashinsky solicited investors by promising to generate yield through low-risk sustainable means, primarily by making collateralized loans to reputable institutions and cryptocurrency exchanges and by making overcollateralized loans to retail investors. In a post on Celsius’s website titled *Celsius Network is Nothing Like BlockFi*, dated March 12, 2019, Mashinsky wrote that Celsius’s team is “hard at work acting in [investors’] best interest” and that Celsius’s business model was “straightforward and transparent.” He outlined Celsius’s investment strategy: “We lend our community’s assets to crypto exchanges and hedge funds looking to borrow coins.”

42. In a YouTube interview on August 5, 2021, titled *How Crypto Yields Work*, Mashinsky claimed that this strategy enabled Celsius to pay investors “almost 100 times more than your bank pays you...and we do that without taking any risk...or taking minimal risk.” In a December 10, 2021, AMA, Mashinsky yet again assured investors that Celsius “[doesn’t] do it by taking risk...”

43. However, Celsius’s business model was unsustainable. As Celsius proved unable to generate sufficient returns through safe loans and investments, it began to make uncollateralized loans to institutional borrowers and engage in risky strategies on unregulated decentralized finance protocols. In his July 14, 2022, sworn declaration filed in Celsius’s bankruptcy proceeding, Mashinsky admitted that Celsius made “poor asset deployment decisions” and that since at least 2021 Celsius’s business model needed significant changes, including reducing the yields paid to investors. Mashinsky also knew, as Celsius outlined in a

presentation to a potential investor in June 2022, that Celsius's trading business was "volatile, risk based, capital intensive and unprofitable" and that Celsius needed to "de-risk the business" by "reducing high risk DeFi, CeFi [centralized finance] and Institutional loans deployments." As alleged in more detail below, Celsius began to incur losses from its investing strategies at least as early as February 2021, and through the rest of 2021 and into 2022. Yet Mashinsky continued to falsely represent to investors that Celsius was generating high yield through low-risk investments and that investors' assets were safe at Celsius.

A. Mashinsky Falsely Claimed that Celsius Made No Uncollateralized Loans

44. Mashinsky repeatedly told investors that Celsius only made loans that were collateralized. In a May 19, 2020, YouTube interview, for instance, Mashinsky stated that "we are only doing asset-backed lending.... We only lend against collateral...without exception.... We have over one hundred percent collateral." In a July 17, 2020, AMA, Mashinsky stated that "Celsius does not do non-collateralized loans" because "that would be taking too much risk on [customers'] behalf." In his November 6, 2020, AMA, Mashinsky reiterated that "We do not do...unsecured lending."

45. Almost two years later, on April 13, 2022, in an interview with CNBC International, Mashinsky was asked to respond to a report that Celsius was offering uncollateralized loans that "could be incredibly risky." Mashinsky still maintained that "we don't offer any non-collateralized loans."

46. Non-collateralized loans are risky because if the borrower is unwilling or unable to repay the loan, the lender has no collateral it can retain or liquidate to offset the loss on the loan. Celsius's own internal Risk Management Framework document, dated October 20, 2021, recognized the "higher risk" of uncollateralized loans.

47. Mashinsky's statements that Celsius did not make non-collateralized loans were materially false and misleading. Between 2020 and 2022 Celsius exponentially increased its exposure to risky uncollateralized loans. In 2020, Celsius made almost \$10 million in uncollateralized loans. In 2021, that number ballooned to at least \$203 million, and in the first half of 2022, Celsius made at least \$394 million in uncollateralized loans. From 2020 through June 2022, Celsius made over 100 uncollateralized loans to at least 19 different counterparties.

B. Mashinsky Misrepresented the Risk and Extent of Celsius's Exposure to Decentralized Finance

48. Unable to generate sufficient returns through collateralized loans to retail and institutional counterparties, Celsius turned to risky investments on decentralized finance platforms to generate yield.

49. The phrase decentralized finance ("DeFi") refers to financial services, like cryptocurrency lending, that operate on a blockchain pursuant to certain predetermined rules ("protocols" and "smart contracts") without the involvement of an institutional intermediary such as a bank or a broker. While transactions on DeFi are typically over-collateralized by cryptocurrency, if the market value of the collateral falls below a certain threshold, the DeFi protocol will automatically liquidate the collateral and close out the loan. In a down market, such liquidations can result in significant loss of value for the borrower. Transactions on DeFi are also risky because DeFi protocols are unregulated and vulnerable to hacking, manipulation, and insolvency.

50. Celsius's risk management unit identified all DeFi investments as high-risk activity. Mashinsky personally acknowledged that DeFi posed risks, but assured investors, including during a December 3, 2021, YouTube interview, that "Celsius... helps people navigate

in a safe way into [the DeFi] environment... because Celsius already did the homework and figured out what's safe."

51. Mashinsky's statements about the safety of Celsius's DeFi investments were materially false and misleading because Celsius had not "figured out what's safe." In fact, Celsius suffered numerous losses caused by known risks of DeFi. For example, in August 2020, Mashinsky personally hired KeyFi Inc., for the purpose of handling Celsius's DeFi investments. KeyFi Inc. then engaged in high-risk leveraged trading strategies with more than \$500 million worth of Celsius's investor assets. By February 2021, these investments resulted in losses of at least tens of millions of dollars, including when a drop in the value of Celsius's collateral on the DeFi protocol Compound triggered automatic liquidation of this collateral.

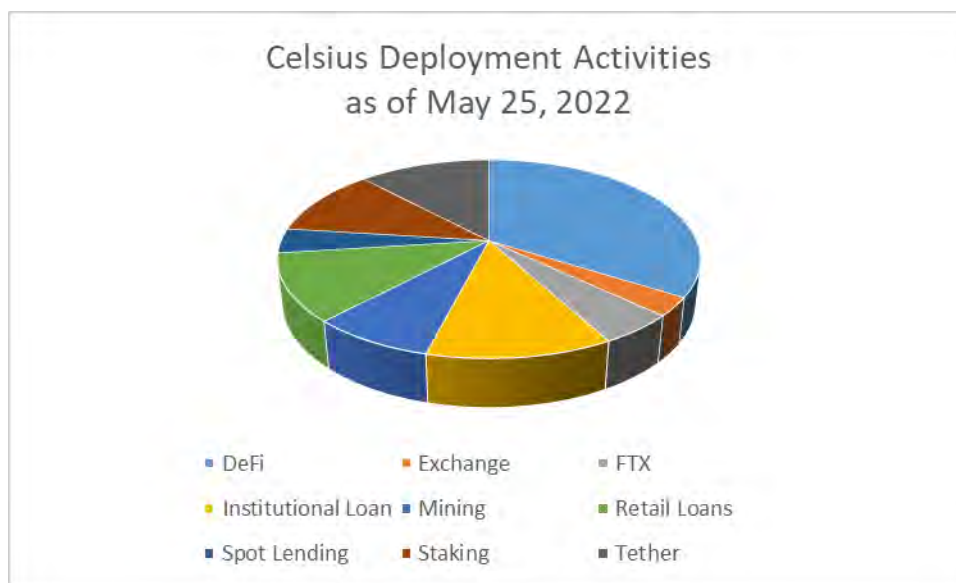
52. Later that year, in June 2021, Celsius lost access to 35,000 Ether worth tens of millions of dollars on a third-party service called StakeHound. Celsius never recovered those assets. Mashinsky failed to disclose this loss when it occurred.

53. Subsequently, in December 2021, Celsius lost Bitcoin then valued at approximately \$50 million in a hack on the DeFi protocol BadgerDAO.

54. As Celsius's losses on DeFi protocols mounted, Mashinsky told investors that Celsius's exposure to DeFi was minimal. In a June 1, 2022, YouTube interview, Mashinsky stated: "Celsius continues to do what it did for the last five years. Again, most of our business, I would say 90% of our business, has nothing to do with DeFi."

55. This statement was false. By the spring of 2022, Celsius had engaged far more than 10% of its assets in DeFi protocols; in fact, DeFi had grown into Celsius's single largest deployment category. Documents produced by Celsius indicate that as of May 25, 2022, Celsius

had deployed nearly 30% of investors’ digital assets into DeFi activities, compared to only about 11% in retail lending and about 12% in institutional lending, as demonstrated in the chart below.



56. Celsius’s large investments in risky DeFi strategies and Celsius’s use of investor cryptocurrency as collateral for borrowing hundreds of millions from DeFi protocols were contrary to Mashinsky’s representations to investors that their assets were invested safely and generated high yield at low risk.

C. Mashinsky Concealed Celsius’s Exposure to Risky Investment Strategies and Institutions

57. Mashinsky was adamant that Celsius only lent assets to credible and reputable counterparties and did so “without taking any risk...or taking minimal risk.” In his November 6, 2020, AMA, Mashinsky stated that Celsius “only lend[s] to the first-tier institutions, first tier exchanges....” On April 13, 2022, Mashinsky falsely and misleadingly claimed that Celsius dealt only with “very credible” institutional counterparties. Yet Celsius routinely exposed investors’ assets to high-risk counterparties and strategies, and Celsius suffered multiple large losses which Mashinsky concealed from investors, despite repeated promises of transparency.

1. Celsius Lost Half a Billion Dollars of Investor Collateral

58. From October 2019 to February 2021, Celsius took out loans from Equities First Holdings (“Equities First”) that were collateralized by investor cryptocurrency. According to Mashinsky’s bankruptcy declaration, these loans were used to finance Celsius’s operations.

59. However, after repaying the loans to Equities First in July 2021, Celsius was unable to get back its collateral worth approximately \$500 million. This was a significant loss of investor assets, which Mashinsky concealed at the time. As of June 23, 2022, Equities First owed Celsius \$441 million on an unsecured basis.

2. Celsius Lent to Risky Companies of Dubious Valuation

60. Celsius made risky loans that were collateralized by illiquid collateral of highly speculative value in the form of proprietary tokens.

61. Between 2020 and 2022, under Mashinsky’s watch, Celsius made loans totaling roughly a billion dollars to Alameda Research Ltd. (“Alameda”), a cryptocurrency trading firm founded by the recently indicted Sam Bankman-Fried. A substantial portion of Alameda’s assets were held in FTT, a proprietary crypto token created and issued by Alameda’s sister company FTX Trading Ltd (“FTX”). FTX propped up the value of FTT by periodically re-purchasing FTT from the market. Celsius accepted FTT as collateral for many of its loans to Alameda. Those loans were risky because FTX was the largest holder of its proprietary token and therefore the valuation of those tokens was disconnected from market forces and subject to manipulation. Alameda filed for bankruptcy in November 2022 along with FTX. The value of FTT has since plummeted by roughly 95%, leaving Celsius holding nearly worthless collateral on any still outstanding loans to Alameda backed by FTT.

3. Celsius Deployed Investor Collateral on the Risky Anchor Protocol

62. Mashinsky misrepresented Celsius's large positions in Terra stablecoin ("Terra" or "UST"). Terra and Luna, its paired token, created by Terraform Labs, were particularly risky because they were an algorithmic stablecoin project, a type of cryptocurrency which, despite the inclusion of "stable" in its name, had in practice proven to be anything but. Prior algorithmic stablecoin projects including Basis Cash, Iron Finance, and Empty Set Dollar had given way to bank runs and death spirals that left the tokens worthless.

63. Terraform Labs also created the Anchor Protocol, a DeFi protocol which promised a 20% yield on deposits of Terra. This high interest rate was heavily subsidized and created artificial demand for Terra and Luna.

64. Mashinsky knew that the high yield promised by Anchor Protocol was too good to be true. During a YouTube interview on December 3, 2021, Mashinsky himself told investors that because "not all yield is created equal," Celsius only used "safe protocols," was "very skeptical," and "careful and [worked] with very few companies." He cautioned that "if somebody's offering you [a yield] of 20%, I would be very careful digging into why and how they're paying it."

65. Moreover, Mashinsky stated that subsidizing interest rates on a lending platform was an "alarming" practice and criticized BlockFi, another cryptocurrency lending platform, for having its rates subsidized by venture investors. He stated that "if BlockFi's VCs ever chose to stop funding the project, it's possible that those rates could crash and burn...."

66. Celsius nevertheless deposited its investors' assets on Anchor Protocol, despite Mashinsky's public acknowledgement of the risks of investing in protocols that paid such unreasonably high yields subsidized by the protocol founder. In the span of only six weeks, from

April 1 through May 6, 2022, Celsius invested approximately \$468 million worth of digital assets “on high earning Terra strategies.” This rapid deployment of funds brought Celsius’s total assets invested on Terra strategies to \$935 million.

67. When the prices of Terra and Luna crashed in May 2022, Mashinsky repeatedly and misleadingly assured investors that Celsius had no exposure to the project, as alleged in more detail below, to perpetuate his false narrative that Celsius made only low-risk investments with investor assets.

V. During the Cryptocurrency Crash of May and June 2022, Mashinsky Continued to Mislead Investors, Including About Celsius’s Financial Condition and Liquidity

68. Beginning in May 2022, following the collapse of Luna and Terra, the cryptocurrency market came under stress and values of nearly all digital assets fell drastically, with tens of billions of dollars in cryptocurrency market capitalization erased over the course of just a few days. Large players in the cryptocurrency industry publicly suffered substantial losses and some filed for bankruptcy. To perpetuate his scheme of keeping Celsius afloat at any cost, even to the detriment of investors, Mashinsky continued to assure investors that their assets were safe at Celsius.

A. In May 2022 Mashinsky Falsely Stated that Celsius Was as Strong as Ever, and Actively Recruited New Investors

69. In May 2022, investors began to withdraw hundreds of millions of dollars’ worth of cryptocurrency daily from the Celsius platform. Celsius saw its largest ever withdrawals on May 12, 2022, when investors withdrew over half a billion dollars from the platform in a single day.

70. The following day, in his May 13, 2022, AMA, Mashinsky stated that “Celsius is stronger than ever, we have billions of dollars in liquidity... and we continue to do what Celsius

does best – serve the community, protect the community, make sure your assets are there when you need them.”

71. A few days later, on May 16, 2022, in a YouTube interview titled *Luna/UST Aftermath on Crypto Markets & Stablecoins*, Mashinsky reiterated that “companies like Celsius... are standing strong.... At Celsius we are ready at all times... we were ready with the liquidity, we were providing everybody the option.”

72. Mashinsky’s statements were materially false and misleading. As a result of losses from risky investments and unsustainable payments of high yields to investors, by May 13, 2022, Celsius had total assets of less than \$12 billion and total liabilities of more than \$12.75 billion, resulting in net assets of negative \$820 million. Celsius was not “stronger than ever;” it was insolvent.

73. Mashinsky also concealed that Celsius had begun to experience a liquidity crisis in May 2022. According to the interim report of the examiner appointed in Celsius’s bankruptcy proceeding, “[b]eginning in May 2022, Celsius faced liquidity challenges. In its May 2022 Board Minutes, Celsius reported that its ‘capital sits near zero.’ At the same time, between May 9, 2022, and May 24, 2022, customer withdrawals caused Celsius to experience a net loss of over \$1.4 billion in assets.”

74. To ameliorate Celsius’s liquidity crisis and to get new investors and new assets onto the platform, Mashinsky misrepresented and concealed Celsius’s financial condition and liquidity, and actively solicited new investors. In his May 27, 2022, AMA, Mashinsky played a pre-recorded solicitation video which offered new investors a bonus for joining Celsius: “Did you know you can earn crypto by referring a friend? You’ll get \$50 in crypto for each completed referral. Your friend will get a \$50 referral reward too.”

75. Mashinsky ramped up his efforts to solicit new investors on May 29, 2022, when he sent the following message on Twitter: “These are hard times for many.... I will personally give one of the new @CelsiusNetwork users \$1000 this week if you show you opened an account and started #HODLing to build your #FinancialFreedom.” The tweet received hundreds of likes and retweets from the public.

76. Mashinsky’s efforts to solicit investors were effective, much to investors’ detriment. Even in the middle of the crypto downturn, between May 13 and June 12, Celsius added almost \$900 million worth of cryptocurrency, and between June 1 and June 17, 2022, it added almost two thousand new users.

B. Mashinsky Misrepresented Celsius’s Exposure to the Fallout from Terra and Luna

77. To dissuade investors from leaving Celsius and withdrawing assets from the platform, Mashinsky made false and misleading statements that Celsius had not been exposed to or suffered losses from the collapse of Terra and Luna.

78. During his June 1, 2022, YouTube interview, Mashinsky minimized Celsius’s exposure to the Terra/Luna fiasco:

I know people are concerned about the whole market and they were specifically concerned with the Terra/Luna situation and we’ve publicly stated many times that we didn’t lend to them, we didn’t buy Luna or UST, we were not like many others who invested in the project, we didn’t have any exposure to that, we have very small losses when we withdrew from the Anchor Protocol but these were in a single millions [sic]....

79. Later in the same interview Mashinsky dismissed concerns that Celsius “must have had huge damage from Luna,” saying “No, we didn’t have any, actually.... You should be worried about other people.”

80. Mashinsky's statements were materially false and misleading. As set forth above, Celsius invested nearly \$935 million worth of investors' assets into "high earning Terra strategies," which were highly speculative and risky and on which it lost almost \$18 million (nearly double what Mashinsky was willing to admit even when asked repeatedly in this interview).

81. In the same interview, Mashinsky was asked whether Celsius had any other exposure to the Terra-related turmoil. Mashinsky replied: "No other exposure that I know of.... There are other market participants who had big investments in Luna and UST, and so we basically either reduced or eliminated any exposure to those parties."

82. This statement was also false. Just weeks after the Terra/Luna collapse and mere days before Mashinsky's June 1, 2022, interview, Celsius made two loans to Three Arrows Capital, Ltd. ("3AC"), a hedge fund that had just suffered large and very public losses as a result of its exposure to Luna. On May 22, 2022, Celsius loaned 3AC \$50 million in stablecoin, collateralized by \$50 million in Bitcoin. On May 31, 2022, Celsius made an additional \$25 million loan to 3AC without requiring 3AC to post *any* collateral. On June 17, 2022, Celsius liquidated 3AC's Bitcoin collateral, which by then was worth only approximately \$35 million.

83. 3AC filed for bankruptcy on July 1, 2022, still owing Celsius a total of \$41 million. As an unsecured creditor, Celsius is unlikely to recover any significant portion of these debts.

C. As Celsius Neared Bankruptcy, Mashinsky Continued to Mislead Investors About Celsius's Available Liquidity and Financial Condition

84. Mashinsky's campaign to save Celsius by deceiving investors continued into June 2022. In an interview on June 1, 2022, Mashinsky was asked about "the elephant in the room;" namely that, "after everything that's happened recently, the number one question from people is

‘are our funds safe at Celsius?’” Mashinsky replied: “yes, so not just that they’re safe... we provided [the opportunity for] anyone who wanted to withdraw partially or fully, there were no problems.”

85. In the same interview, Mashinsky was asked: “If there ever were any type of insolvency issues, it sounds like you’ve got the framework and infrastructure with your transparency to let the community know immediately if there is a problem....,” to which Mashinsky replied “Yes.” This response was false and misleading because on May 25, 2022, Celsius had less than \$11 billion in total assets and approximately \$11.9 billion in total liabilities, with a deficit of almost \$900 million, which Mashinsky did not disclose.

86. In his June 10, 2022, AMA – only two days before Celsius froze withdrawals from its platform – Mashinsky said: “Celsius has billions in liquidity.... [W]e provide the immediate access to everybody, anyone who needs access to it, to the liquidity.” In the same AMA, Mashinsky stated “when you went through several bear markets, you know what to do... you need to have liquidity, which we have... that’s why anyone who wants to withdraw has no problem....”

87. The next day, on June 11, 2022, one Twitter user speculated about Celsius’s ability to fulfill withdrawal requests: “I hope retail [investors] can get out. I’ve been hearing about accounts locked.” Mashinsky immediately rejected the premise that Celsius investors were in any danger, replying on Twitter: “[D]o you know even one person who has a problem withdrawing from Celsius? Why spread FUD and misinformation.”

88. But the very next day, on June 12, 2022, Celsius paused investor withdrawals “in order to stabilize liquidity and operations while we take steps to preserve and protect assets....”

89. Mashinsky's repeated statements in June of 2022 that Celsius had billions of dollars of liquidity, that anyone who wanted to withdraw could do so, and that investor assets were safe at Celsius were materially false and misleading. By this time Celsius's liquid assets were far less than Celsius's liabilities to investors.

90. Celsius had experienced losses from the deployment of investor assets, resulting in negative weekly gross revenue for four out of the six weeks prior to June 12, 2022. That means that, for those weeks, Celsius paid more in interest to its EIA investors than it generated through investments of their cryptocurrency. Celsius's Chief Financial Officer confirmed this during an August 19, 2022, meeting of creditors in Celsius's bankruptcy case, when he stated: "It does not look as though we had enough yield to support what we were paying out.... We paid out over a hundred percent of the yield that we took in from deployments...."

91. As a result of losses from risky investments and unsustainably high yield payments to investors, Celsius's deficit (the difference between its assets and liabilities) had increased to over \$1 billion by mid-June 2022. Even then, Celsius's assets were inflated because they included the value of CEL, Celsius's proprietary token, held on Celsius's books. Celsius was the largest CEL token holder and controlled its supply in the market, meaning that the token was largely illiquid and of very speculative value. Celsius would never have been able to convert any significant proportion of its CEL holdings into dollars without crashing the token's market value, which would have caused further harm to Celsius's balance sheet.

92. Despite mounting losses, Mashinsky continued to conceal Celsius's true financial condition. While touting Celsius's liquidity and strength in his numerous YouTube interviews and weekly AMAs between May 1 and June 12, 2022, Mashinsky never disclosed that Celsius

had close to a billion-dollar deficit on its balance sheet and that it continued to experience a liquidity crisis. Rather he actively denied that there was any cause for concern.

93. After investors withdrew over \$672 million in cryptocurrency between June 10 and June 12, 2022, Celsius paused withdrawals in order to “stabilize liquidity” and was never able to restart them. Celsius filed for bankruptcy on July 13, 2022. By that point, Celsius had over \$4.7 billion in user liabilities, only \$1.75 billion in cryptocurrency assets. Furthermore, at least \$467 million worth of investors’ cryptocurrency was locked up in a decentralized application and unavailable for investor withdrawals, while additional investor assets were tied up in Celsius’s other businesses.

VI. Mashinsky Misled Investors About Celsius’s Compliance with Applicable Laws and Regulations

94. Celsius’s EIAs attracted the attention of state securities regulators in 2021. By the end of September 2021, the securities regulators of Alabama, New Jersey, Texas, and Kentucky had issued cease and desist orders to Celsius or notices of hearing seeking such orders, alleging that EIAs were unregistered securities or that Celsius was soliciting or selling securities while unregistered in violation of the respective states’ securities laws.

95. On October 18, 2021, the OAG sent a letter to Mashinsky and Celsius requesting information and documents concerning Celsius’s EIAs and other business practices.

96. On October 20, 2021, Washington State’s Department of Financial Institutions issued a statement of charges and a notice of intent to enter a cease-and-desist order against Celsius for selling unregistered securities and for failing to register as a broker-dealer.

97. Yet in a December 3, 2021, YouTube interview, Mashinsky blatantly misrepresented that “states and other regulators have looked into Celsius, they all came back thumbs up, there’s no problem, we didn’t find anything....” Mashinsky’s statements were

materially false and misleading because by that time at least five state securities regulators had alleged that Celsius was engaged in the offer or sale of unregistered securities or was itself an unregistered broker-dealer and had either directed Celsius to stop illegal activities in their states or had indicated their intention to seek such an order. Likewise, the OAG certainly never gave Celsius or Mashinsky a “thumbs up” or indicated there was “no problem” with their conduct. Contrary to Mashinsky’s December 3, 2021, statement, multiple regulators were then actively investigating – and continue to investigate – Celsius’s conduct.

VII. Mashinsky Violated New York State Registration Laws

98. By promoting EIAs through AMAs, YouTube interviews, and postings on Celsius’s website, Mashinsky sold and offered for sale securities without registering with the OAG as a securities dealer or a securities salesperson. Mashinsky also promoted and sold commodities in the form of cryptocurrencies without registering with the OAG as a commodities broker-dealer or a commodities salesperson.

99. EIAs are securities under the Martin Act because investors deposited their cryptocurrency assets with Celsius with the expectation of receiving promised yields from Celsius’s efforts in deploying investors’ pooled assets.

100. Under New York State law, a dealer is a person that is engaged in the business of selling securities to the public within or from New York for its own account and selling or offering for sale to the public securities issued by it. GBL § 359-e(1)(a).

101. As described above, Mashinsky offered, promoted, and sold EIAs, which he issued to the public from New York. Mashinsky was the majority shareholder of Celsius, a private company, and had access to the private keys to Celsius’s wallets, including to the wallet containing cryptocurrency pooled from customer EIA accounts. Private keys grant access and

determine ownership of the cryptocurrency. Mashinsky was a dealer under New York law and promoted and sold securities for his own account within the meaning of GBL § 359-e(1)(a).

102. A salesperson is a person employed by a broker or dealer for the purpose of representing them in the sale of securities to or from the public within or from New York. GBL § 359-e(1)(c). Mashinsky received a regular salary from Celsius and was employed by Celsius for, among other reasons, the purpose of selling and promoting its EIAs. Mashinsky was a salesperson within the meaning of GBL § 359-e(1)(c).

103. Mashinsky also acted as a salesperson without successfully completing the required examinations known as the “Series 63” or the “Series 66” that cover securities industry regulations and ethical practices and obligations.

104. As a dealer and salesperson of securities under New York law, Mashinsky was required to file a registration statement with the OAG prior to engaging in such conduct. GBL § 359-e(3).

105. Mashinsky was not exempted from the filing requirements.

106. Mashinsky failed to file a registration statement in connection with Celsius with the OAG prior to engaging in conduct that required such filing, in violation of GBL § 359-e(3).

107. Mashinsky also offered for sale from New York various cryptocurrencies to investors worldwide. Digital assets are commodities under the Martin Act.

108. Under New York law, a commodity broker-dealer is a person engaged in the business of selling or offering for sale commodities through commodity contracts to the public from New York. GBL § 359-e(14)(a)(iii). A commodity salesperson is a person employed by or representing a commodity broker-dealer in selling or offering for sale commodities through commodity contracts to the public from New York. GBL § 359-e(14)(a)(iv).

109. Mashinsky was engaged in the business of offering for sale and selling various cryptocurrencies through commodity contracts to the public from New York, and received a salary from Celsius, in part for promoting the sale of commodities, all through Celsius's app or website, Mashinsky was a commodity broker-dealer and a commodity salesperson under GBL § 359-e(14)(a). As a commodity broker-dealer and a commodity salesperson under New York law, Mashinsky was required to file a registration statement with the OAG prior to engaging in such conduct. GBL § 359-e(14)(b). Failure to register is a fraudulent practice under the Martin Act unless exempt. GBL § 359-e(14)(j, l).

110. Mashinsky sold or offered for sale commodities primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser.

111. Mashinsky was not exempted from the filing requirements, yet he failed to file a registration statement in connection with Celsius with the OAG as a commodity broker-dealer or commodity salesperson prior to engaging in conduct that required such filing, in violation of the Martin Act.

112. Mashinsky's failures to register under GBL § 359-e prior to offering or selling securities and commodities to New York investors each constitute fraudulent practices under the Martin Act. Such repeated and persistent conduct also constitutes illegality under Executive Law § 63(12).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Martin Act Securities Fraud – General Business Law §§ 352 and 353

113. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

114. The acts and practices of the Defendant alleged herein violated Article 23-A of the General Business Law in that they consisted of materially false and misleading representations, statements, and omissions relating to the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice or distribution of securities or commodities, and constituted fraudulent acts and fraudulent practices as defined in GBL § 352 *et seq.*

115. The acts and practices of the Defendant alleged herein constituted a scheme to defraud and other fraudulent practices as defined in General Business Law §§ 352 *et seq.*

SECOND CAUSE OF ACTION
Martin Act Securities Fraud – General Business Law § 352-c(1)

116. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

117. The acts and practices of the Defendant alleged herein violated General Business Law § 352-c(1)(a), in that they involved illegal and prohibited acts or practices in the use or employment of a fraud, deception, concealment, suppression, or false pretense, where said uses or employments were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this State of any securities or commodities.

118. The acts and practices of the Defendant alleged herein violated General Business Law § 352-c(1)(b), in that they involved illegal and prohibited acts or practices in the making of promises or representations as to the future which were beyond reasonable expectation or unwarranted by existing circumstances where said promises or representations were made to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this State of any securities or commodities.

119. The acts and practices of the Defendant alleged herein violated General Business Law § 352-c(1)(c), in that they involved illegal and prohibited acts or practices in the making of representations or statements which are false, where Defendant (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made, where said representations were made to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this State of any securities or commodities.

THIRD CAUSE OF ACTION
Martin Act Failure to Register – General Business Law § 359-e and Regulations
Promulgated Thereunder, 13 NYCRR §§ 10, 13

120. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

121. The acts and practices of the Defendant alleged above violated New York General Business Law § 359-e and regulations promulgated thereunder, including provisions of Official Compilation of Codes, Rules, and Regulations of the State of New York Title 13, Chapter II, Subchapter A, Parts 10 and 13, insofar as such acts and practices constitute the sale or purchase of, or offer to sell or purchase, securities or engaging in the business of selling or offering to sell commodities through commodity contracts, from or to the public within or from the state of New York without filing a registration statement with the OAG.

FOURTH CAUSE OF ACTION
Repeated and Persistent Fraud – Executive Law § 63(12)

122. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

123. The acts and practices of the Defendant alleged herein constitute conduct proscribed by § 63(12) of the New York Executive Law, in that Defendant engaged in repeated

fraudulent acts or otherwise demonstrated persistent fraud in the carrying on, conducting or transaction of business in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION
Repeated and Persistent Illegality – General Business Law §§ 352 and 353
Executive Law § 63(12)

124. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

125. The acts and practices of the Defendant alleged herein constitute conduct proscribed by Executive Law § 63(12), in that the Defendant engaged in repeated illegal acts in violation of New York General Business Law §§ 352 and 353.

126. Accordingly, Defendant has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION
Repeated and Persistent Illegality – General Business Law § 352-c(1)
Executive Law § 63(12)

127. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

128. The acts and practices of the Defendant alleged herein constitute conduct proscribed by Executive Law § 63(12), in that the Defendant engaged in repeated illegal acts in violation of New York General Business Law § 352-c(1).

129. Accordingly, Defendant has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SEVENTH CAUSE OF ACTION
Repeated and Persistent Illegality – General Business Law § 359-e and Regulations
Promulgated Thereunder, 13 NYCRR §§ 10, 13
Executive Law § 63(12)

130. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

131. The acts and practices of the Defendant alleged herein constitute conduct proscribed by Executive Law § 63(12), in that the Defendant engaged in repeated illegal acts, in violation of New York General Business Law §359-e and regulations promulgated thereunder, including provisions of Official Compilation of Codes, Rules, and Regulations of the State of New York Title 13, Chapter II, Subchapter A, Parts 10 and 13, insofar as such acts and practices constitute the sale or purchase of, or offer to sell or purchase, securities or engaging in the business of selling or offering to sell commodities through commodity contracts, from or to the public within or from the state of New York without filing a registration statement with the OAG.

132. Accordingly, Defendant has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- A. Permanently enjoining Defendant from violating the Martin Act, Article 23-A of the General Business Law, and Executive Law § 63(12) and from engaging in the fraudulent, deceptive and illegal acts alleged herein;
- B. Permanently enjoining Defendant from engaging in any business related to the issuance, offer, distribution, exchange, promotion, advertisement, negotiation, purchase, investment advice, or sale of securities or commodities, including any cryptocurrencies or digital assets, within or from this state;
- C. Permanently enjoining Defendant from serving as an officer or director of any company doing business in this state;
- D. Directing Defendant to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein plus applicable pre-judgment interest;
- E. Directing Defendant to disgorge all amounts or assets obtained in connection with or as a result of the fraudulent and deceptive acts and violations of law alleged herein;
- F. Directing Defendant to make restitution of all amounts or assets obtained from investors in connection with the fraudulent and deceptive acts and violations of law complained of herein;
- G. Directing that Defendant pay Plaintiff's costs and fees;
- H. Directing such other equitable relief as may be necessary to redress Defendant's violations of New York law; and

I. Granting such other and further relief as may be just and proper.

Dated: New York, New York
January 5, 2023

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Exhibit S

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[Additional Counsel Appear on Signature Page.]

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

TAYLOR GOINES, Individually and on
Behalf of Itself and All Others Similarly
Situating,

Plaintiff,

v.

CELSIUS NETWORK, LLC, CELSIUS
LENDING, LLC, CELSIUS KEYFI LLC,
ALEXANDER MASHINSKY, SHLOMI
“DANIEL” LEON, DAVID BARSE, and
ALAN JEFFREY CARR,

Defendants.

Case No.

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Taylor Goines (“Plaintiff” and/or “Goines”) brings this action on behalf of himself and all others similarly situated against Defendants Celsius Network LLC (“Celsius”), Celsius Lending LLC, Celsius KeyFi LLC (collectively, the “Celsius Entities”) and the company executives Individual Defendants Alexander Mashinsky, Shlomi “Daniel” Leon, David Barse, and Alan Jeffrey Carr. Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of all people in the United States who purchased Celsius Financial Products by way of a Celsius Earn Rewards Account, the Company’s so-called native “CEL Tokens,” and/or the Celsius Loans (collectively referred to as the “Celsius Financial Products”) from February 9, 2018 to the present (the “Relevant Period”).

2. Celsius is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, the sale of its unregistered securities, as well as engaging in proprietary trading.

3. In particular, Celsius has offered and sold Celsius Earn Rewards Accounts to investors, through which investors lend crypto assets to Celsius in exchange for Celsius’ promise to provide a variable monthly interest payment. Celsius generated the interest paid out to Earn Rewards Account investors by deploying its assets in various ways, including loans of crypto assets made to institutional and corporate borrowers, lending U.S. dollars and stablecoins to retail investors, and by investing in other highly speculative cryptocurrency ventures. Celsius then pools these cryptocurrencies together to fund its lending operations and proprietary trading.

4. Celsius investors are promised a better-than-market interest rate that is paid monthly in cryptocurrency in exchange for investing in the Earn Rewards Accounts. The Earn Rewards Accounts are not protected by the Securities Investor Protection Corporation (the “SIPC”) nor are they insured by the Federal Deposit Insurance Corporation (the “FDIC”). Furthermore, the Earn Rewards Accounts are not registered with the United States Securities and Exchange Commission (“SEC”), the New Jersey Commissioner of Corporations (“Commissioner”), or any other securities regulatory authority, or exempt from registration. Despite the additional risk, and lack of safeguards and regulatory oversight, as of March 2021, Celsius held the equivalent of \$10 billion from the sale of these unregistered securities in violation of federal and state securities laws, which peaked at over \$25 billion later that year.

5. Since February 9, 2018, Celsius, through its affiliates Celsius Lending LLC and Celsius KeyFi LLC, has been, at least in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of Earn Rewards Accounts and CEL tokens, and through providing loans to investors that deposited CEL Tokens or other digital assets in exchange for a fiat cash loan (a “Celsius Loan”).

6. The Earn Rewards Accounts and Celsius Loans were securities under the securities test set forth in *Reves v. Ernst & Young*, 494 U.S. 56, 64-66 (1990) and its progeny. Additionally, all of the Celsius Financial Products are investment contracts under the four-prong test set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) and its progeny, including the cases discussed by the SEC in its Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO.¹

¹ Securities and Exchange Commission, Release No. 81207, *Report of Investigation Pursuant to Section(a) of the Securities Exchange Act of 1934: The DAO*, (Jul. 25, 2017).

7. Worse still, throughout the Relevant Period, Defendants made a series of misleading statements that induced unsuspecting investors to purchase the Celsius Financial Products at inflated rates.

8. In June 2022, the cryptocurrency market in general faced a downtrend, with the prices of digital assets decreasing across the board. This broader market downturn exposed the fragility of the Celsius ecosystem and, more importantly, that Celsius did not have enough assets on hand to meet its withdrawal obligations. Much like a literal Ponzi scheme, Celsius could only maintain its yield rate promises by continually bringing in new investors whose new influx of money would be used to pay off the yield for old investors.

9. Because of Defendants' unregistered offers and sales of securities, the New Jersey Bureau of Securities, on or around July 20, 2021, issued a cease-and-desist order to Celsius requiring the Company to "halt[] the offer and sale of these unregistered securities."²

PARTIES

Plaintiffs

10. Plaintiff Taylor Goines ("Goines") is a citizen of the State of Arkansas and resides in Rogers, Arkansas. Plaintiff Goines purchased the Celsius Financial Products during the Relevant Period and suffered investment losses as a result of Defendants' conduct.

Defendants

11. Celsius Network, LLC ("Celsius") is a Delaware limited liability company, registered on June 14, 2021, with offices at 221 River Street, 9th Floor, Hoboken, New Jersey. Celsius conducts its business on the internet, through a website accessible to the general public at

² State of New Jersey Bureau of Securities, *Summary Cease and Desist Order, In the Matter of Celsius Network, LLC*, (Sep. 17, 2021).

<https://www.celsius.network> (the “Celsius Website”), which is also accessible through Celsius’ own proprietary app via smartphone/tablet.

12. Celsius Lending LLC is a Delaware limited liability company, registered on December 29, 2020, with offices at 221 River Street, 9th Floor, Hoboken, New Jersey. Celsius Lending LLC conducts its business on the internet, through a website accessible to the general public at <https://www.celsius.network> (the “Celsius Website”), which is also accessible through Celsius’ own proprietary app via smartphone/tablet.

13. Celsius and Celsius Lending LLC are collectively referred to as the “Company.”

14. Celsius KeyFi LLC is a Delaware limited liability company formed on May 28, 2019, with its headquarters located in Hoboken, New Jersey. Celsius KeyFi is a wholly owned subsidiary of Celsius.

15. Defendant Alexander Mashinsky (“Mashinsky”) is a resident and citizen of New York, living in New York, New York. Mashinsky is the founder and Chief Executive Officer of Celsius, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

16. David Barse (“Barse”) is a resident and citizen of New York, living in Harrison, New York. Barse served as an executive director of Celsius, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

17. Alan Jeffrey Carr (“Carr”) is a resident and citizen of New York, living in East Quogue, New York. Carr served as an executive director of Celsius, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

18. Shlomi Daniel Leon (“Leon”) is a resident and citizen of New York, living in New York, New York. Leon was the co-founder of Celsius and served as an executive director and the Chief Operating Officer, and he exercised control over Celsius and directed and/or authorized, directly or indirectly, the sale and/or solicitation of Celsius Financial Products to the public.

19. Defendants Mashinsky, Barse, Carr, and Leon are collectively referred to as the “Executive Defendants.”

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over claims under the Securities Act pursuant to 15 U.S.C. §78aa and 28 U.S.C. §1331, and supplemental jurisdiction over the entire action under 28 U.S.C. §1367.

21. Venue is proper under 28 U.S.C. §1391 because Defendants have their principal place of business in this District and therefore reside in this District. Venue is further proper pursuant to 15 U.S.C. §78aa.

22. This Court has personal jurisdiction over Defendants because they are subject to general jurisdiction in this District because Defendants’ principal place of business is in this District.

FACTUAL ALLEGATIONS

A. Celsius Background

There is no rules in this business. – Alexander Mashinsky, CEO and Founder of Celsius

23. Celsius began as Celsius Network Limited – a privately held company that was incorporated on February 9, 2018, with its registered office located at 77-79 New Cavendish Street, London, England and its headquarters at 35 Great St. Helen’s, London, England, EC3A 6AP.

24. On June 23, 2021, Celsius Network Limited announced that it was “migrating our main business activity and headquarters from the United Kingdom to the United States” and was withdrawing its “application from the UK Financial Conduct Authority’s temporary registration regime for crypto assets.”³ The Company stated that its “efforts will be focused on securing licenses and registrations in the US and other jurisdictions that will ensure the long-term viability of Celsius and its community.”⁴

25. In anticipation of this migration to the United States, Celsius formed a new corporate entity, Celsius Networks, LLC and opened its headquarters in Hoboken New Jersey.

26. For its entire existence, Celsius was a financial services company, generating revenue through cryptocurrency trading, lending, and borrowing, as well as by engaging in propriety trading. Since June 2018, Celsius has been, at least in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts. Celsius refers to these unregistered securities as its “Earn Rewards” account.

27. Celsius solicits investors to invest in the Earn Rewards accounts by depositing certain eligible cryptocurrencies into the investors’ accounts at Celsius. Celsius then pools these cryptocurrencies together to fund its various income generating activities, including lending operations and proprietary trading. In exchange for investing in the Earn Rewards product, investors are promised an attractive interest rate that is paid weekly in the same type of cryptocurrency as originally invested, or, subject to certain conditions, in Celsius’ native digital token CEL.

³ <https://blog.celsius.network/celsius-community-update-june-23-2021-a28fca899091> (last visited Jul. 12, 2022).

⁴ *Id.*

28. The Celsius Earn Rewards Accounts, CEL Tokens, and the Celsius Loans are not registered with any state or federal securities regulatory authority, or are they otherwise exempt from registration. Celsius' Earn Rewards accounts are not protected by the SIPC, insured by the FDIC, nor are they insured by the National Credit Union Administration ("NCUA").

29. This lack of a protective scheme or regulatory oversight subject Celsius investors to additional risks not borne by investors who maintain assets with most SIPC member broker-dealers, banks and savings associations, or credit unions.

30. Despite the lack of safeguards that SIPC, FDIC, and the NCUA would offer or the regulatory oversight of registration, Celsius held the equivalent of more than \$14 billion from the sale of these unregistered securities in violation of the Securities Law as of August 18, 2021.

31. On September 17, 2021, the New Jersey Bureau of Securities (the "Bureau") issued a Summary Cease and Desist Order against Celsius. In this order, the Bureau made the following findings of fact: (1) the Earns Reward product was a security as defined in N.J. Stat. Ann. § 49:3-49(m) (West); (2) the "Earns Reward product had not been registered with the Bureau, is not exempt from registration, and is not federally covered"⁵; and (3) that Celsius had offered and sold unregistered securities in violation of N.J. Stat. Ann. § 49:3-60 (West) and continues to do so.

32. In conclusion, the Bureau, pursuant to Uniform Securities Law (1997), N.J. Stat. Ann. § 49:3-47 to -89 (West), ordered Celsius to cease and desist from (1) offering for sale any security, including any Earn Rewards product, to or from New Jersey without first registering the security with the Bureau or qualifying for an exemption; (2) accepting any additional assets into an existing Earn Rewards account; and (3) violating any other provision of the Securities Law and any rules

⁵ See fn.2, *supra*.

promulgated thereunder for the sale of any security in New Jersey.⁶ The Bureau also denied that Celsius qualified for any exemptions to the New Jersey registration requirements for securities.

33. Around the same time the Texas Bureau of Securities issued a similar cease and desist notice of hearing against Celsius.⁷

B. The Securities Offered and Sold by Celsius

34. Celsius offers a suite of Financial Products to investors, including its Earn Rewards Accounts, CEL Tokens, and Celsius Loans.

1. Earn Rewards Accounts

35. Celsius offers and sells what it calls Earn Rewards Accounts, which are, in truth, unregistered securities in the form of individual and corporate accounts. Investors in these accounts (“Earn Rewards Investors”) deposit certain popular cryptocurrencies with Celsius to earn high interest rates of “up to 17.78% Annual Percentage Yield (“APY”).” The promoted interest rates advertised by Celsius are well in excess of the rates currently being offered by short-term investment grade fixed income securities or on bank savings accounts.

36. Celsius offered its Earn Rewards Accounts to anyone over the age of 18, except for residents of certain foreign jurisdictions subject to regulatory restrictions.

37. When an investor signs up with Celsius, they verify their age, identity, and address, provide an identification document, complete a user agreement and a KYC (Know Your Customer) protocol. A link to the Celsius Terms of Use (“Celsius Terms”) appears at the bottom of each of its web pages.

⁶ *Id.*

⁷ https://ssb.texas.gov/sites/default/files/2021-09/20210917_FINAL_Celsius_NOH_js_signed.pdf (last visited Jul. 12, 2022)

38. The Celsius Website states that Celsius does not require a minimum amount of cryptocurrency for deposit in an Earn Rewards account.

39. Celsius only accepts certain types of cryptocurrencies for deposit in the Earn Rewards accounts. Although Celsius refers to its payments to Earn Rewards Investors as “Rewards,” these “Rewards” are just another way to say “interest,” which is clear from Celsius’ API Partner disclosures from the Celsius Website. For example, in the “Interest Calculations” section it states: “This pages describes how interest is calculated and disbursed. Celsius pays interest on the value of each asset in a user’s wallet. Interest is paid using the same asst(s) that is held in the user’s wallet. Obtain current interest rates for each token using the SDK `getinterestRates0` method or Get Interest Rates API operation.”⁸

40. Earn Rewards Investors earn a variable interest rate on their investment and may withdraw their digital assets at any time, subject to a maximum three-day processing time specified by Celsius.

41. The variable interest rates for the Earn Rewards Investors are posted on the Celsius Website. Celsius’ interest rates for deposits of certain cryptocurrencies in its Earn Rewards accounts are “tiered” depending upon the nature and amount of the cryptocurrency invested, as explained on the Celsius Website. Currently, Earn Rewards Investors are entitled to 6.2% on their first Bitcoin deposited and 3.51% on additional deposits of Bitcoin. Rates on other cryptocurrencies range from 13.99% for the Synthetix Network Token (SNX) to 0.0% for Ripple.

42. Celsius also pays interest for deposits of certain Stablecoins in its Earn Rewards accounts, as explained on the Celsius Website.

⁸ See fn.2, *supra*.

43. The manner in which interest is calculated and credited to Earn Rewards Investors illustrated on the Celsius Website and specified in the Celsius Terms, states as follows:

See what you could be earning.

United States Rates International Rates

How much?
\$ 30000

Which crypto?
BTC

How long?
5 Years

Earning with Celsius
\$10,898
APY
6.20%
6.20% on 1st BTC, 3.51% after

Free \$50 in BTC

This calculator is for information and reference purposes only. Rewards are calculated weekly and may change from time to time, and the rates presented above are not guaranteed for the duration of the above term.

Rewards are payable based on a daily periodic rate applicable to the Loaned Digital Assets. The daily periodic rate is calculated by dividing the then-applicable annual reward rate by three hundred sixty-four (364) days; then it is further divided down to the hour, minute, and second of that day. Loaned Digital Assets, including those received as Rewards from previous weeks, will begin gaining Rewards according to the hour, minute, and second on the timestamp verifying the completion of the applicable transaction and shall cease and/or decrease the amount paid as Rewards at the moment when the User has entered an external transmission, withdrawal or transfer of rights (via CelPay) request, or posted any Loaned Digital Assets as collateral for a Fiat Loan. Therefore, any Loaned Digital Asset transferred mid-week will receive Rewards with no distinction, based on the rates calculated for the relative time within the allocation period.

9

44. Celsius advertises that interest on the Earn Rewards product is paid to investors in cryptocurrency (or CEL Tokens depending on certain factors) based on the “daily periodic rate,” which is “calculated by dividing the then-applicable annual reward rate by three hundred and sixty-four days (364); then it is further divided in the hour, minute, and second of that day” and is credited to the Earn Rewards Investors’ accounts weekly on the first business day of the week.

45. Celsius describes its business model in a now-deleted blog post as one that returns 80% of its total revenue to Earn Rewards Investors: “The Celsius business model is structured to do the exact opposite of what banks do – by giving 80% of total revenue back to our community each

⁹ <https://celsius.network/> (last visited Jul. 12, 2022)

week in the form of earned interest. We earn profits by lending coins to hedge funds, exchanges, and institutional traders, and by issuing asset-backed loans at an average of 9% interest. We're taking the exact same 80% profit margin that banks have kept for themselves for centuries and returning it to our community of depositors.”¹⁰

46. Prior to the issuance of cease-and-desist orders from Texas and New Jersey, the Earn Rewards Accounts were available for purchase by anyone holding idle digital assets. In the wake of the Bureau's findings of fact, however, Celsius limited the sale of Earn Rewards Accounts in the U.S. to accredited investors.

47. Notably, a similar financial product (i.e. a high APR interest account on crypto lending) offered by cryptocurrency firm BlockFi was investigated by the SEC in 2022. On February 25, 2022, the SEC announced a settlement with BlockFi for \$100 million in penalties for offering unregistered BlockFi interest accounts (BIAs) that offer high APRs to customers to lend out digital tokens. Pursuant to that settlement, the BIAs (which are virtually identical in form and substance to the Celsius Loan products) must now be classified and registered as securities under applicable security laws, as BlockFi was determined not to qualify for an exemption from SEC registration. BlockFi agreed to cease offering or selling BIAs in the U.S. until it registers its crypto lending products.

2. CEL Tokens

48. Celsius provides investors that deposit their crypto assets within the Celsius Network with two choices for how they would like to receive their yield: “In-Kind” or “In-CEL.” Celsius pays users who select “In-Kind” in the same asset they deposited and users who choose “In-CEL” in CEL,

¹⁰ See <https://www.nasdaq.com/articles/voyager-token-is-soaring-as-investors-search-for-yield-in-crypto-space-2021-04-13> (quoting Celsius blog post). (last visited on Jul. 12, 2022).

Celsius’ native token, at a higher APY. For example, Celsius currently advertises a 6% APY on Ethereum (“ETH”) deposits paid in ETH and 7.87% APY on ETH deposits paid in CEL. Celsius explains this extra CEL in its whitepaper: CEL Tokens are a “platform utility token” that is rewarded to crypto holders in the Celsius Wallet as interest on their coins. That interest is generated from fees, in CEL tokens, collected from institutional traders who use the assets pool. Celsius uses the proceeds from the sale of CEL tokens to cover “all costs and membership growth” for the Celsius Earns Rewards Accounts.

49. These CEL tokens then get distributed back to the users lending their crypto on Celsius’ website. In this model, the borrowers are the ones buying CEL. Celsius is simply collecting payment in its native token and transferring the proceeds back to its users.

50. In reality, it appears that, rather than redistributing in-CEL fees from lenders to users, Celsius was purchasing hundreds of millions of dollars of CEL Tokens to meet liabilities to users.

51. On-chain analysis of Celsius’ wallets and their CEL Token transactions show the scale of potential CEL repurchases. As detailed in the Arkham Report on the Celsius Network (the “Arkham Report”) “from July 2019 to March 2021 Suspected Celsius addresses withdrew over 76 million CEL from the exchange Liquid, worth \$127 million at the time of withdrawal. Since December 2021, suspected Celsius addresses have also withdrawn around 82 million CEL from FTX – equivalent to 12% of the total CEL supply and worth \$226 million at time of withdrawal.”¹¹ The Arkham Report concluded that because those withdrawals were not “preceded by equivalent CEL

¹¹ Arkham Report on Celsius Network, Arkham, <https://www.arkhamintelligence.com/reports/celsius-report> (last visited Jul. 12, 2022).

deposits by Celsius, and because Celsius does not appear to use these exchanges for CEL custody, these withdrawals likely indicate CEL purchases.”¹²

52. By purchasing its customers' in-CEL payments rather than collecting them through fees or distributing from the treasury, Celsius profit margins decreased as this added another cost. Additionally, Celsius was required to expend capital that could otherwise be used to meet withdrawal requests, risking a liquidity crisis like Celsius began experiencing in June 2022 (discussed further below).

3. The Celsius Loans

53. The Company also offered and sold various promissory notes to investors that deposited their digital assets within the Celsius Network (the “Celsius Loans”).

54. The Celsius Loans were available to eligible investors via the “Borrow” option available on the Celsius mobile app.

55. Borrowers deposited their digital assets as collateral onto the Celsius mobile app in exchange for fiat or one of several stablecoins like USDC, USDT, and DAI. Celsius then would collect monthly interest payments on the Celsius Loans.

56. Celsius marketed these particular Financial Products with the hashtag slogan “#UnbankYourself” on its various social media accounts. For example, on March 22, 2021, the Celsius Twitter account posted the following message to investors: “We know time is money, so we've made it easier to have both by offering loans with interest rates as low as 1%, ZERO

¹² *Id.*

origination fees, and same day approval. Get cash in hand today without giving up on your investment.”¹³

C. Celsius Misleadingly Promoted Its Financial Products

1. Misleading Statements

57. Celsius made a series of misleading and false statements in connection with the promotion of the Celsius Financial Products. For example, Celsius and Mashinsky repeatedly promoted its Earn Rewards Accounts as “high-yield” and “low-risk” investments for investors. They also claimed the stability of the interest paid was primarily due to all of the institutional payments Celsius received from its Celsius Loan products. Concurrently, Defendants also repeatedly touted the growth prospects for the Company and the CEL Token. These misrepresentations painted a rosy picture for Celsius’ future and lured unsuspecting investors into purchasing the Celsius Financial Products at inflated rates.

58. At the outset, the Arkham Report describes the nature of Celsius’ misrepresentations:

Celsius Network positions itself as a wallet that enables users to “Earn” on the assets they “deposit.” The “deposit” could be described as an unsecured loan from the user to the organization, and “Earn,” or accrual of value to the user over time, could be described as synthetic liability accrual, meaning it is not on-chain.

Celsius attracted users by offering exceptionally high yields on deposits, such as 5% APY for Bitcoin and up to 10% for USD-pegged stablecoins – 100x the average conventional savings account interest rate of 0.1%. For Celsius to make good on its high yield promised to investors it needed it outperform those high returns through its lending and investing to make money and remain solvent. This is impracticable through conventional lending in traditional finance, where interest rates aren’t high enough. ***Through Celsius’ public materials, they claim such high yields are sustainable by the nature of the cryptocurrency market.***

¹³

<https://twitter.com/CelsiusNetwork/status/1374010096145952769?s=20&t=sQgj5D1x21gHwOFPs4eLHg>

On the “Why Trust Celsius” section of the website, Celsius directs users to its whitepaper from 2018. ***This whitepaper explains that “members will be able to easily earn interest on their crypto assets the same way they earn on the savings in the bank – but with much better rates.”*** When describing where this yield comes from, the whitepaper states, “Hedge funds, family offices and crypto funds still want to play in the world of cryptocurrency. Fortunately for us, they are willing to pay high fees to do so.”

In a video on the official Celsius Network YouTube channel titled “How Celsius earns yield,” ***CEO Alex Mashinsky explains that Celsius earns its yield through institutional lending.*** According to Mashinsky, when an institution needs fast access to crypto assets for arbitrage, market making, or shorting, they borrow those assets from Celsius at a high interest rate for a short period of time. Mashinsky claims that “the key is to get a high yield at a low risk.”

Building a banking business on the model of high yield at low risk can be compared to building a business on the model of buying dollars for 50 cents. It’s a perfect model, except it requires finding someone who will take the other side of the trade. If other lenders agreed that a loan was low risk then it wouldn’t be high yield, so you have to rely on systematically beating the market. This is hard to do with billions of dollars of capital at rates many times those of conventional low-risk loans, which recently have been at zero or even negative interest. In reality, ***despite their public emphasis on institutional lending, Celsius was chasing yield in other places that many would not characterize as low-risk.***¹⁴ (Emphasis added).

59. The Celsius Website also touted the increased return on investment that investors could expect from buying and holding CEL Tokens. For example, according to the promotion on the “CEL Token Explained” page on the Celsius Website, “More CEL. More rewards. It’s not rocket science.” Celsius also provided the following chart to investors, which outlines the high yield rates that CEL Token investors would receive. Notably, the yields could take the form of “Bonus Rewards” (*i.e.*, extra interest) or a “Loan Interest Discount” (*i.e.*, a credit towards a Celsius Loan product):

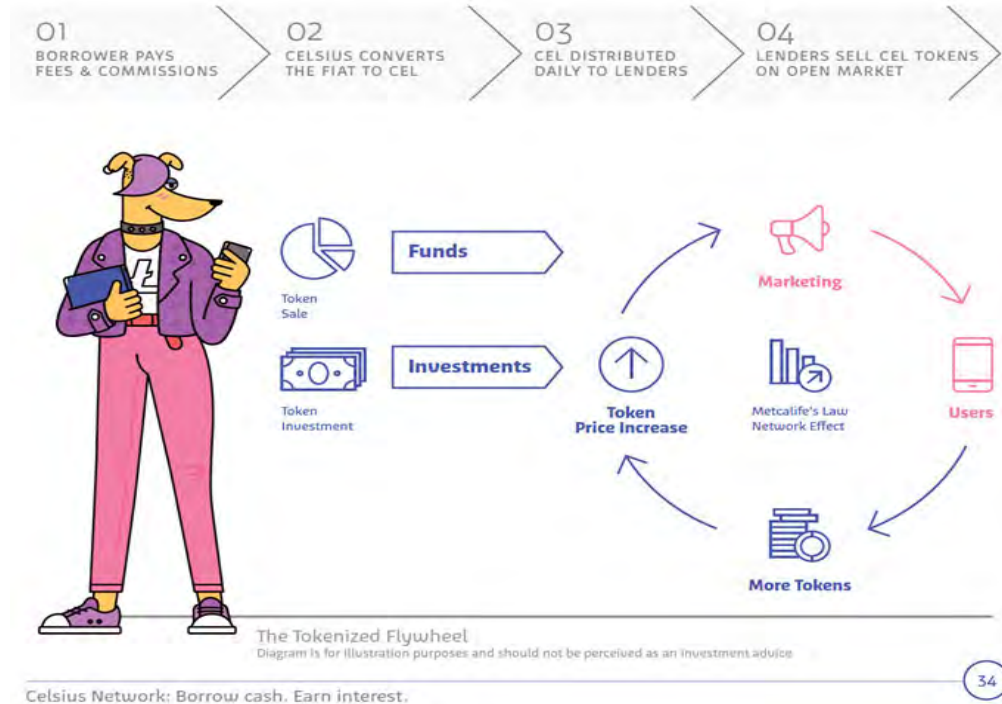
¹⁴

Id.

Reward Status	CEL Ratio	or CEL Balance	Bonus Rewards	Loan Interest Discount
NONE	0%-5%	0 CEL	0%	5%
BRONZE	5%-10%	1 CEL	10%	5%
SILVER	10%-15%	1,000 CEL	15%	10%
GOLD	15%-25%	10,000 CEL	20%	15%
PLATINUM	25%-100%	25,000 CEL	30%	25%

60. Celsius promoted the CEL Token as both an investment product that essentially paid dividends and a credit that could be used in the purchase of a Celsius Loan product.

61. The whitepaper further promoted what it calls the “Tokenized Flywheel,” which purports to show how the Celsius Financial Products interact with each other to create a perpetual wealth creation system. The following diagram illustrates this notion:



62. A similar version of the Tokenize Flywheel is currently posted on the Celsius Website:



63. Celsius and its executives, including but not limited to Mashinsky, also held weekly podcasts on YouTube throughout the Relevant Period, using the “Ask Me Anything” (“AMA”) format, whereby investors could ask questions directly to Mashinsky and other Celsius

representatives. During these podcasts, Mashinsky and Company insiders repeatedly made false and misleading statements regarding Celsius’ operations and financial stability.

64. For example, on February 5, 2021, Celsius held an AMA session on YouTube,¹⁵ wherein Mashinsky made several statements promoting the Celsius Loans to investors. In particular, response to a question about whether Celsius would allow borrows to use multiple sources of collateral for their Celsius Loans, Mashinsky proclaimed that crypto investors that held CEL Tokens or other cryptocurrencies should “borrow against it” because “it helps you earn [and] defer your taxes. That’s what the rich guys do. That’s how they stay rich and famous.”¹⁶

65. Later during that AMA, an investor asked about the circumstances under which Celsius will liquidate a borrower’s collateral. Tal Bentov, the VP Lending (Retail) at Celsius, replied:

First of all, we hate the word ‘liquidations.’ We really want to avoid it at all costs. If you get a margin call and you don’t know how to answer . . . You have different coins, you need some more time . . . You need to contact us and let us know that. We have a big enough team that we can handle all of this . . . ***We liquidate only when someone is not answering our margin calls and he/she keeps being in default. We give a lot of time. A lot more than others. Trust me. Sometimes weeks to answer our margin calls!***¹⁷ (Emphasis added).

66. Near the end of the February 5th AMA, Mashinsky promoted the Earn Rewards Accounts’ ability to “earn” investors various cryptocurrencies “for free.”

67. On February 12, 2021, Mashinsky participated in the weekly Celsius AMA, discussing, among other things, the various future prospects for the Company. Notably, Mashinsky agreed that the purchase of CEL Tokens was “an investment in Celsius’ future,” and went on to stated that “Celsius has 2 components. Celsius has the CEL Token and also the equity. When you buy the CEL Token, you’re basically voting ‘yes’ or ‘no’. You’re voting with the community on your need,

¹⁵ <https://www.youtube.com/watch?v=2wqD78AnFaw> (last visited Jul. 12, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

or you're wanting to earn more interest. You're going to get that 25% bonus, or that 25% premium."¹⁸

68. On February 26, 2021, Mashinsky participated in the weekly Celsius AMA on YouTube,¹⁹ discussing, among other things, how Celsius would deal with "handling flash crashes." Mashinsky stated:

We don't provide high LTV's. . . . Celsius doesn't make money by liquidating you. We don't charge any fees. We don't try to give you these gimmicks and special rates . . . Our goal, our mission is to make sure that we have you as a customer for life. What are the chances that you're going to stick with us if we liquidated you? Most of our loans are 25% or 33% LTV loans. We discourage you from taking 50% LTV loans because that is much higher risk. ***So Celsius did not have any liquidations, because we give you plenty of time. We give you advanced notice most of the time, then we tell you you can put more collateral or return some of the dollars or assets back.*** We have almost 0 liquidations. That's not our business. It's the opposite of our business.²⁰ (Emphasis added).

69. On April 23, 2021, Mashinsky again made statements regarding Celsius' borrower-friendly stance on liquidations during a Celsius weekly AMA on YouTube.²¹ In particular, Mashinsky stated a "margin call doesn't mean we sold your assets or stole your coins. That's what the other guys do. ***We always give you ample time*** to post more collateral, return some of the assets, or instruct us to sell your coins."²² (Emphasis added).

70. On May 28, 2021, Mashinsky promoted the stability and wherewithal of the CEL Token: "Looking at coins, the CEL token was one of the most stable out there. It did better than Bitcoin or Ethereum. It did not drawdown as much. Obviously Celsiusians who held CEL did very

18

Id.

19

<https://www.youtube.com/watch?v=cZPy7Pu6vxg&t=3s> (last visited Jul. 12, 2022).

20

Id.

21

<https://www.youtube.com/watch?v=bzEyHLgBY7Y&t=350s> (last visited Jul. 12, 2022).

22

Id.

well as well.”²³ Mashinsky congratulated the investors that held onto their CEL Tokens during the brief market downturn and bragged that there were “only 20 liquidations” from the 10,000 margin calls that occurred during that time period because Celsius “does a better job than most. Accommodating, providing enough warning, giving you enough time for doing what’s right. We don’t make any money from liquidating you.”²⁴ Mashinsky proclaimed that “during these drawdowns is when Celsius shines, both from the fact that it does not crash [CEL]. I think NEXO token was down about 75% from top to bottom just last week. So those are examples of just a different community. A HODL community versus a speculative community. Same thing with Binance and other platforms. Obviously, we only care about doing what’s in the best interests of the HODLer.”²⁵

71. On July 16, 2021, Mashinsky participated in the Celsius AMA on YouTube and asked investors “So, when are you building us a rocket? We’re going to the moon! Everyone wants to know when CEL Token is going to the moon [Mashinsky pounds on the desk]! . . . I have to beat these billionaires! I want to be in outer space”²⁶ The phrase “going to the moon” in the crypto trading context refers to a drastic increase in the price of digital asset in question. Here, Mashinsky was signaling to investors that the price of the CEL Token was going to increase exponentially in the future.

72. Similarly, Mashinsky stated during a September 10, 2021 AMA on YouTube that “We are shooting to the moon. We might get there before Elon Musk. Because our numbers are just

²³ <https://www.youtube.com/watch?v=C7d7rZUEfGo> (last visited Jul. 12, 2022).

²⁴ *Id.*

²⁵ *Id.*

²⁶ <https://www.youtube.com/watch?v=B9eNsTnpAxx> (last visited Jul. 12, 2022).

getting better and better.”²⁷ Again, these promotions were meant to mislead investors into purchasing CEL Tokens on the prospect that the CEL Tokens’ value would increase.

73. On December 1, 2021, Celsius held an AMA session on YouTube where investors could ask questions of Celsius representatives. One investor expressed concern about a “CEL token liquidation cascade” and asked whether Celsius was “worried at all,” to which Celsius content manager Zachary Wildes replied “I’m personally not . . . I do think we need to bring a lot more time and attention and focus to CEL token and its utilities. I’m not concerned about a cascading liquidation event where everyone gets destroyed.”²⁸ Wildes continued that “We’re at a low-point for CEL sentiment and the future of the token” and asked Mashinsky if there was “any level of reassurance we can give . . . to the community to show our commitment to CEL token?”²⁹ Mashinsky responded that “Earning in CEL allows you to earn twice as many CEL right now with the price lower. If you believe in the viability of the company, then you would know you’re getting a 50% discount. If you don’t believe in it, then you probably don’t want these CELs anyway. If you’re not sure about it, how about some of the worlds best investors coughing up 750\$ Million? They bought into half of all the CEL tokens out there. Our Treasury, which is mostly CEL token. They’re part owners of that”³⁰ Mashinsky’s statements suggested to investors that the Company’s successes would lead to a 50% increase in the CEL Token price in the future and that Celsius had the support of well-capitalized backers who would be able to continue to shore up Celsius’ finances.

²⁷ <https://www.youtube.com/watch?v=lc8crMFnRgY> (last visited Jul. 12, 2022).

²⁸

https://www.youtube.com/watch?v=1v9zDkWbZJc&list=PL91_dMxDmGklKGD KCX_YFDLeRk0ag2Koj&index=28 (last visited Jul. 12, 2022)

²⁹ *Id.*

³⁰ *Id.*

74. On January 12, 2022, Mashinsky participated in the weekly Celsius YouTube AMA podcast, promoting the “huge demand for CEL Token” that the Company was creating.³¹ “We still have new users signing on every day and none of that changes. But this is all new demand that never existed before.”³² Mashinsky further stated that “We believe that the token has not shown its full potential yet. A lot of it is on us. Again, we were not focused on the token performance and all that in 2021. As you can see, we’re launching big things this year. And obviously, these things are gonna have major major impact on the price of CEL.”³³

75. Later during the AMA, Mashinsky was confronted by a popular commentator in the crypto sector, Dirty Bubble, who asked if Mashinsky or other Celsius insiders were selling their CEL Tokens. Mashinsky became defensive, vaguely acknowledging that he and his wife “did a bunch of transfers. We did sell some tokens. It’s not like we didn’t sell any. My wife hasn’t sold anything.”³⁴ But then Mashinsky went on to challenge anyone listening “to go and find one project, just one, where the founders hold more tokens in their project than Celsius. Just find one!”³⁵ Mashinsky excused his selling activities saying “you know, there is no rules in this business. It’s not like somebody has to hold the tokens . . . I wouldn’t measure what me or Nuke or Krissy or Daniel do as having anything to do with what the company does. You guys should just watch if the company is working for you. Does the company deliver things that are in your best interests?”³⁶

76. Dirty Bubble replied that “Celsius is going off of reputation” and asked about whether Celsius would be making the same kind of disclosures of CEL Token sales by Celsius executives as

³¹ https://www.youtube.com/watch?v=bPk7rKAXMvU&list=PL91_dMxDmGklKGDKCX_YFDLeRk0ag2Koj&index=22 (last visited Jul. 12, 2022).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

would be required if Celsius was a public company.³⁷ Mashinsky bluntly replied “We’re not a public company! So what the fuck are you talking about!”³⁸

77. On January 19, 2022, Mashinsky participated in the weekly Celsius “Ask Me Anything” session on YouTube and made a series of statements regarding the CEL Token and how it was poised for future growth in use and, more importantly, price.³⁹ For example, during this AMA, Mashinsky went on a rant about how everyone at Celsius did not “have to worry about humility” because they instead had “conviction.”⁴⁰ In a seemingly unintentional moment of honesty, Mashinsky essentially admitted that Celsius relied on con-man style tactics to instill confidence in a target: “Everybody from Celsius on this call has the same conviction. They wouldn’t be a part of CEL Team 6 if they didn’t have that full conviction. 100%. And they don’t need humility. They just need to share with you the conviction and CONVINCING you that it’s the right thing.”⁴¹ Mashinsky then quickly returned to promoting the CEL Token’s future, acknowledging that the Company “took our hand off the wheel” with the CEL Token, but that they had a plan and a “super team” to “get the car back on the road.”⁴²

78. For example, when asked about how Celsius generates revenue, Mashinsky responded that “*We always make all of our money from institutions* . . . We don’t charge fees, spreads, all of that stuff.”⁴³ (Emphasis added).

³⁷ *Id.*

³⁸ *Id.*

³⁹ https://www.youtube.com/watch?v=EE4k_WLqldc&list=PL91_dMxDmGklKGDKCX_YFDLeRk0ag2Koj&index=21 (last visited Jul. 12, 2022).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

79. Celsius’ whitepaper also promoted the CEL Token as a necessity for the Company’s future growth: “Our lending and borrowing model requires a blockchain and an open ledger technology, it also requires consensus and a global footprint of coin holder in order to really gain traction and complete our mission. Any loan we issue may be collected from thousands of individual coin holders which may be switched at any time. Only a smart contract capable of tracking and paying in micropayments can handle such complexity.”⁴⁴ In truth, Celsius does not operate a blockchain of its own and the CEL Token is a simply a standard ERC-20 token built on the Ethereum blockchain. Moreover, Celsius’ suggestion that managing a loan ownership profile requires a blockchain is not true.

80. As noted in a blog post on January 18, 2022, entitled *Celsius Network: Financials proved it was a Ponzi scam* the “real purpose of this token was to create an Initial Coin Offering (“ICO”) that netted them \$50 million without strings to start financing their operations. But there is one other valuable feature: they can pay investors with this token they minted out of thin air because non-US investors have the option to receive their returns in the CEL token for an extra 2% yield and it costs Celsius effectively nothing.”⁴⁵

81. As such, this token really serves no purpose for investors.

82. Celsius leads consumers to think that most of the yield Celsius offers its users comes from institutional securities lending. When browsing the Celsius Network website, users find multiple explanations of how their return comes from lending assets to institutions on a short-term basis. On the Celsius YouTube channel, customers find videos of the CEO of Celsius praising their institutional lending strategies and even berating the risk of DeFi yield strategies.

⁴⁴ <https://celsius.network/static/celsius-whitepaper.pdf> (last visited Jul. 12, 2022).

⁴⁵ <https://wantfi.com/celsius-network-review.html> (last visited Jul. 12, 2022).

83. In a Celsius network video published on May 24th, 2022,⁴⁶ CEO Alexander Mashinsky offers his thoughts on the then-breaking Luna-Terra collapse. Mashinsky provided this advice regarding crypto yield-bearing products: “if you do not understand where the yield comes from, then you should not be in the project. If you cannot prove how the yield is earned, do not invest in the project.”⁴⁷

84. Notably, Celsius does not make it clear for an average user of Celsius to figure out all of the sources of their money’s yield, and their associated risks. Instead, what investors are told is that depositing crypto in Celsius is akin to depositing money in a savings account, and the profit comes from institutional lending. But as noted, Celsius has purposefully refused to provide investors with all of the wallet addresses owned/controlled by Company insiders. Without sophisticated wallet labeling to determine which anonymous addresses belong to Celsius Network and on-chain analysis of the movement and usage of these funds, it is extremely difficult to know Celsius is hunting yield with corporate funds via leveraged positions in DeFi protocols with liquidation risk.

85. On June 4, 2022, Mashinsky posted a message on his official Twitter account, admitting to using risky decentralized finance investments after users accused his company of misleading customers on the source of yield and use of funds: “Celsius lends on DeFi when yields are high and borrows on DeFi when rates are low like now. @CelsiusNetwork is earning income from these activities.”⁴⁸ Mashinsky then dismissed the criticism of the way Celsius promoted the source of yield and use of funds, calling them “baseless allegations” to make investors doubt the validity of the well-founded criticisms.

⁴⁶ <https://cryptonews.com/videos/bitcoin-has-never-done-this-before-alex-mashinsky-gives-price-outlook-talks-terra-collapse.htm> (last visited Jul. 12, 2022).

⁴⁷ *Id.*

⁴⁸ <https://twitter.com/Mashinsky/status/1533261237202599938?s=20&t=nHwUESvAsmWNp8dmmyy-dA> (last visited Jul. 12, 2022).

86. The Company also misled investors about the future growth potential for the Earn Rewards Accounts, encouraged Earn Rewards Investors to treat their Earn Rewards Accounts as long-term investments as evidenced by the statement on Celsius’ homepage: “Start earning top rates on any amount of crypto and get paid every paid every Monday to keep HODLing.” According to Celsius, “HODL started as a typo and has become a crypto rallying cry. A misspelling of the word ‘hold,’ HODLers believe in the future of digital currencies and know it would be a mistake to sell at this early stage.”⁴⁹

87. Celsius also touted the ability of Earn Rewards Investors to manage their Earn Rewards accounts as long-term investments using the “HODL Mode” feature of their Celsius account. Celsius describes HODL Mode on its Website as an account security feature “that gives [account holders] the ability to temporarily disable outgoing transactions from [their] Celsius account. [Account holders] control when HODL Mode is activated and it is an ideal feature for those that do not plan on withdrawing or transferring funds from their account for an extended period of time.”⁵⁰

88. Celsius’ corporate culture of promoting “HODLing,” including its description of Celsius as a “HODLing platform,” the premium interest rates Celsius pays on its Earn Rewards accounts, the weekly compounding of interest payments, and the availability of HODL Mode makes the Celsius Earn Rewards account an attractive long-term investment to Celsius Earn Rewards Investors.

89. At the same time Celsius and Mashinsky were promoting the Earn Rewards Accounts and the CEL Tokens, Mashinsky was secretly selling millions of dollars’ worth of CEL Tokens.

⁴⁹ <https://support.celsius.network/hc/en-us/articles/360001716538-What-s-HODL-> (last visited Jul. 12, 2022).

⁵⁰ <https://support.celsius.network/hc/en-us/articles/360007608077-What-is-the-HODL-Mode-> (last visited Jul. 12, 2022).

90. According to the Arkham Report, several Ethereum addresses have been identified as likely belonging to Celsius CEO Alexander Mashinsky (the “Mashinsky Wallets”).⁵¹ The Mashinsky Wallets regularly sold large amounts of CEL Tokens on decentralized exchanges, totaling \$44 million. At the same time that he was promoting CEL Tokens to users and denying that he was selling the token, Mashinsky appears to have been quietly selling millions of dollars of CEL Tokens.

91. The following is a list of the specific addresses comprising the Mashinsky Wallets, which are owned/controlled by Mashinsky and/or his wife Krissy Mashinsky, and were used to sell the CEL Tokens that Mashinsky had set aside for himself at the time of minting:

- 0xf716F34cb7FabfaA930169eC66278f525b6a1597 (\$21M in sales)
- 0x34F30e5473fE5D2dcD9A930275Be30ACC1EEF12b (\$100k in sales)
- 0x11729acCDA2dA02B453cB4AEA4EFCDeDc0E56bD9 (\$1M in sales)
- 0xc33192B79AD149b05169516A8aF2adc6e1E08EF6 (\$12M in sales)
- 0x6D27BA372b148A190F0806899e53a6D4009cf5af (\$8M in sales)
- 0x23cE2180754AF6207Ee13e745BC903795661e7C9 (\$300k in sales)
- 0xd50061dDC6E813F56dF865D450B3cC61973E881A (\$2M in sales)
- 0x2a020312Dd646D81acBC81015Df532eAFC2D5257 (\$530k in sales)

92. Most of the CEL sales from the Mashinsky Wallets took place on the decentralized exchanges Uniswap and Airswap. Typically, Mashinsky swapped CEL Tokens for the stablecoin USDC. In other instances, Mashinsky opted to take ETH or wBTC. Notably, one of the Mashinsky Wallets also deposited CEL Tokens to the centralized exchange Liquid at the same time that Celsius was purchasing large amounts of CEL Tokens on that same exchange. As discussed in the Arkham

⁵¹ See fn.10, *supra*.

Report, this particular Mashinsky Wallet address deposited over 9.1 million CEL Tokens to Liquid from June 2019 to July 2020.⁵² During the same time, Celsius appears to have purchased over 29 million CEL from Liquid, creating a situation where Celsius was using corporate funds on the same orderbook the CEO used to exit his CEL Token position.

93. As all of this activity was occurring within the Mashinsky Wallets, Mashinsky publicly promoted CEL and denied that he or other founders were selling. He also gave the impression that he was increasing his CEL holdings by publicizing CEL purchases.

94. For example, on October 9, 2021, Mashinsky tweeted, “Lots to CELebrate here in #London busy week with a lot of large deals and events. It pays to #HODL.”⁵³ Nine hours later on the very same day, one of the Mashinsky Wallets sold 12K CEL on Airswap for \$69k in USDC. Similarly, on December 9, 2021, Mashinsky posted a message on his Twitter account, promoting CEL Tokens as a long-term investment for Company insiders and stating: “All @CelsiusNetwork founders have made purchases of #CEL and are not sellers of the token.”⁵⁴ But only five days earlier, on December 4, 2021, one of the Mashinsky Wallets was selling over 11,000 CEL Tokens for about \$43,000 worth of WBTC.

95. Since June 9, 2021, the Mashinsky Wallets sold approximately 2.8 million CEL Tokens valued at over \$16 million at the time.

2. Celsius Used the API Partners Program to Sell Earns Rewards Accounts

96. Celsius offers an Application Programming Interface (“API”) that allows certain institutional users, known as Celsius “API Partners,” to integrate with the Celsius platform.

⁵²

Id.

⁵³

<https://twitter.com/Mashinsky/status/1446846073713184772> (last visited Jul. 12, 2022).

⁵⁴

<https://twitter.com/Mashinsky/status/1468995783982825480> (last visited Jul. 12, 2022).

97. Celsius affords its API Partners the ability to offer the Earn Rewards accounts to retail investors in two different ways.

98. First, the Celsius “Segmented Accounts” platform allows API Partners to offer the API Partners’ own customers the Celsius Earn Rewards accounts through the API Partners’ own portal. An API Partner availing itself of Celsius’ Segmented Accounts structure offers the API Partner’s own retail customers the opportunity to access the Celsius Earn Rewards account through the API Partner’s own portal, as opposed to the API Partner’s retail customers accessing the Celsius Earn Rewards account directly from Celsius’ own website. Apart from the difference in how the Earn Rewards account is accessed, individual retail customers of API Partners offering the Segmented Account option are subject to the same rights, benefits, terms, and conditions as Celsius’ own Earn Rewards Investors.

99. Second, Celsius’ API Partners can choose to access the Celsius Earn Rewards accounts through what Celsius refers to as an “Omnibus Account.” In the Omnibus Account, the API Partner maintains a direct relationship with Celsius and invests in a Celsius Earn Rewards account for the benefit of its individual customers, whose cryptocurrencies the API Partner has aggregated for the purpose of investing in the Celsius Earn Rewards account on behalf of, and for the benefit of, the API Partner’s individual retail customers.

100. Celsius incentivizes the API Partners by paying a fee to Segmented Account partners based on a percentage of rewards payable by Celsius to the end-user, and also pays fees to Omnibus Partners, in addition to the Earn Rewards payable.

101. Celsius is selling unregistered securities in the form of Earn Rewards accounts to its API Partners’ Segmented Account customers.

102. Celsius is selling unregistered securities to its API Partners who choose to open API Partner Omnibus Accounts with Celsius.

D. The June 2022 Celsius Crisis

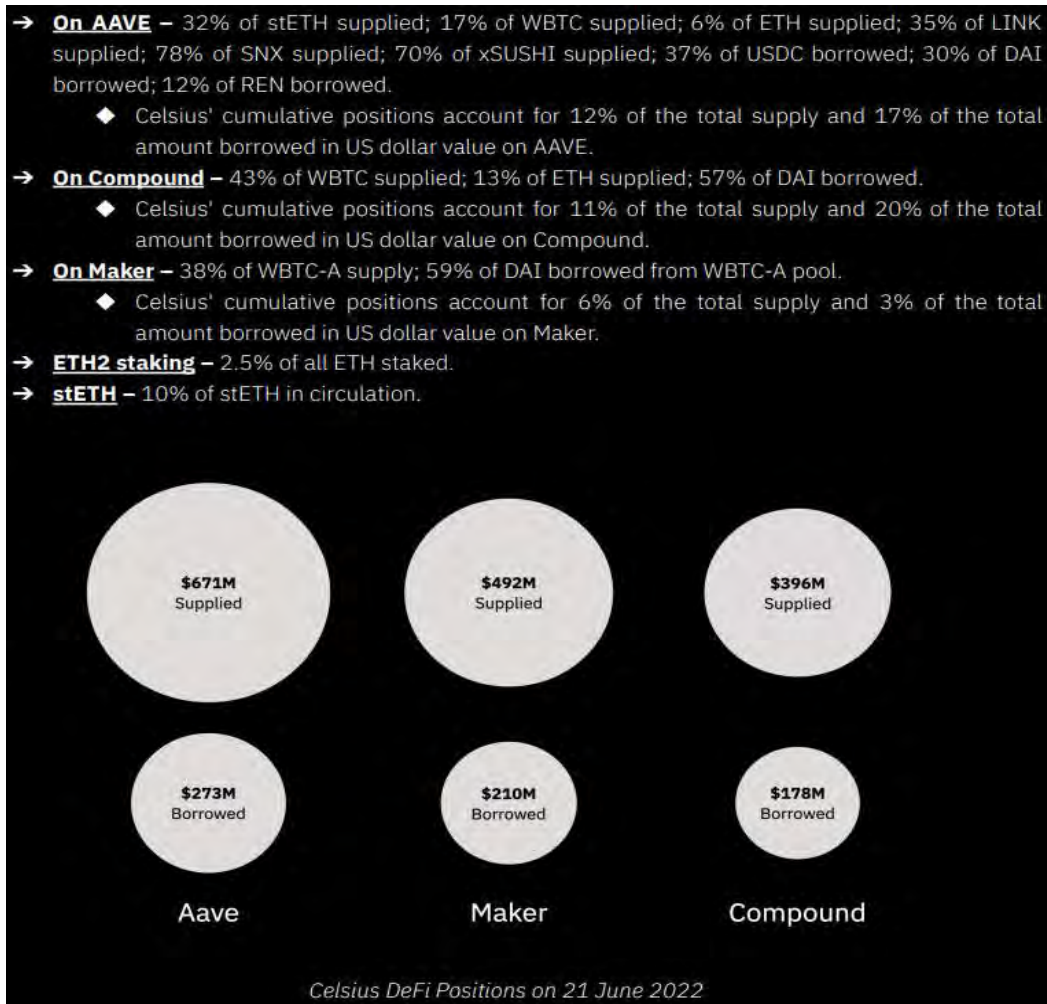
103. On-chain analysis of Celsius owned/controlled wallets indicates that Celsius had billions of dollars in leveraged positions on decentralized finance (DeFi) protocols that were threatened with liquidation when the broader crypto market was in decline. In order to avoid liquidation, it appears Celsius was forced to deploy \$750 million of liquid assets that could no longer be used to meet withdrawal obligations.

104. Upon information and belief, it was Celsius taking of these risky, highly-leveraged positions that caused Celsius to pause user withdrawals, swaps and transfers.

105. On July 8, 2022, a research company Arkham published the Arkham Report on Celsius Network, detailing the business practices of Celsius and company insiders like Defendant Mashinsky. According to the Arkham report, “Celsius was one of the biggest players in DeFi, accounting for a huge portion of the funds deployed to the three largest DeFi protocols, Compound, Aave, and Maker.”⁵⁵

106. The Arkham Report also provided the following breakdown of Celsius’ DeFi positions as of June 21st, 2022, eight days after freezing user accounts:

⁵⁵ See fn.10, *supra*.



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107. In early June 2022, the broader digital asset and cryptocurrency market saw a steep decline in price, which precipitated Celsius Network's crisis. On June 10th, 2022, Bitcoin began the day trading at around \$30,000. Over the following eight days, Bitcoin's price fell over 40% to below \$18,000. Other crypto assets saw an even more dramatic crash during this time.

108. The crypto market downturn forced Celsius to deploy significant capital to protect the Company's highly-leveraged DeFi positions from liquidation. Maker allows users to borrow DAI (Maker's native stablecoin pegged to one US dollar), against various collateral options. Each loan has a maximum collateral-to-debt ratio that triggers a liquidation of the posted collateral when

⁵⁶

Id.

crossed. On June 10, 2022, Celsius had 17.8k WBTC of collateral in Maker and \$280 million in DAI borrowed against it. The loan had a minimum collateralization ratio of 145%, meaning the position is liquidated when the collateral posted is worth less than 145% of the debt. At the time, this WBTC was worth \$530 million for a 190% collateralization ratio, seemingly a comfortable cushion. But the combination of liability-asset denomination mismatch and volatility caused the strength of the position to deteriorate rapidly.

109. In three days, the price of Bitcoin fell below Celsius' original liquidation price of \$22.8k. The fragility of Celsius' leveraged positions forced the company to use liquidity to pay down debt instead of honoring customer withdrawals. Between June 11, 2022 and June 16, 2022, Celsius added 6.2k WBTC as collateral and paid back 53.8 million of its DAI debt, reducing its liquidation price to \$13.6k per BTC. Since July 1, 2022, they paid back another \$220 million in DAI to close out the position. AAVE rates every position on its platform with a health factor based on various risk parameters and liquidates any position with a health factor below 1.0. At the start of the market downturn, around June 10, 2022, Celsius appears to have had \$604 million of collateral against \$303 million in debt on AAVE with a health factor of 1.6. On Compound, Celsius appears to have had \$421 million of collateral against a \$218 million debt. During the market crash, Celsius again gathered liquid capital to shore up these liabilities, adding tens of millions of dollars' worth of BTC, ETH, LINK, SNX, and BAT as collateral on AAVE and paying \$30 million toward their debt. On Compound, they paid \$40 million towards their debt and added over \$1 million UNI as collateral. Since June 10, 2022, Celsius has deployed \$546 million in stablecoins, 7.2k BTC, 16.3k ETH, and tens of millions of dollars of other tokens to its leveraged DeFi positions. These deployments were worth roughly \$750 million at the time of transactions.

110. On June 13, 2022, Celsius froze all accounts. According to their official announcement, this was done “due to extreme market conditions in order to stabilize liquidity and operations while we take steps to preserve and protect assets.”⁵⁷

E. The Celsius Financial Products Are Unregistered Securities

1. Earns Rewards Accounts and Celsius Loans Are Securities Under *Reeves*

111. As noted by the United States Supreme Court, “Congress’ purpose in enacting the securities laws was to regulate *investments*, in whatever form they are made and by whatever name they are called. However, notes are used in a variety of settings, not all of which involve investments. Thus, they are not securities per se, but must be defined using the ‘family resemblance’ test.” *Reves*, 494 U.S. 56, 67.

112. Pursuant to the family resemblance test, a note is presumed to be a “security,” and that presumption may be rebutted only by a showing that the note bears a strong resemblance (in terms of the four factors we have identified) to one of the enumerated categories of instrument. *Id.* These factors include: (1) investments in a business enterprise; (2) there was “common trading” of the notes, which offered and sold to a broad segment of the public; (3) the public reasonably perceived from advertisements for the notes that they were investments, and there were no countervailing factors that would have led a reasonable person to question this characterization; and (4) there was no risk-reducing factor that would make the application of the Securities Acts unnecessary, since the notes were uncollateralized and uninsured and would escape federal regulation entirely if the Acts were held not to apply. *Id.*

113. Here, the four enumerated factors do not militate in favor of rebutting the presumption that the Earn Rewards Accounts and Celsius Loans are securities. First, Plaintiff and the class

⁵⁷ <https://blog.celsius.network/a-memo-to-the-celsius-community-59532a06ecc6>

invested fiat and/or other digital assets and cryptocurrencies in a business enterprise, namely Celsius. There was common trading of the Earn Rewards Accounts insomuch as the digital assets deposited by investors were regularly offered and sold to both institutional and retail investors. All of the marketing materials promoted by Defendants led the public to believe that opening up an Earn Rewards Account with Celsius was a “high-yield, low-risk” investment.

2. The Celsius Financial Products Are All Securities Under the *Howey* Test

114. Under Section 2(a)(1) of the Securities Act of 1933 (“Securities Act”), a “security” is defined to include an “investment contract.” 15 U.S.C. §77b(a)(1). An investment contract is “an investment of money in a common enterprise with profits to come solely from the efforts of others.” *W.J. Howey*, 328 U.S. at 299. Specifically, a transaction qualifies as an investment contract and, thus, a security if it is: (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation of profits; and (4) to be derived from the entrepreneurial or managerial efforts of others. *See United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852-53 (1975). This definition embodies a “flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits,” and thereby “permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of ‘the many types of instruments that in our commercial world fall within the ordinary concept of a security.’” *W.J. Howey*, 328 U.S. at 299. Accordingly, in analyzing whether something is a security, “form should be disregarded for substance,” and the emphasis should be “on economic realities underlying a transaction, and not on the name appended thereto.” *Forman*, 421 U.S. at 849.

115. Investors who bought Earn Rewards accounts invested money or other valuable consideration, in a common enterprise: namely Celsius. Investors had a reasonable expectation of profit based upon the efforts of the Defendants.

i. Celsius Investors Invested Money

116. Plaintiff and the Class invested fiat, including U.S. dollars, and digital currencies, such as Bitcoin and Ethereum, to purchase Earn Rewards accounts.

117. The Earn Rewards accounts were available on the Company's website and mobile app, which allowed retail investors to purchase Earn Rewards accounts with traditional and other digital currencies.

118. Defendants sold Earn Rewards accounts to the general public through global, online cryptocurrency exchanges during its so-called launch.

119. Every purchase of Earn Rewards accounts by a member of the public is an investment contract.

ii. Celsius Financial Product Investors Were Intertwined in a Common Enterprise with Defendants

120. Additionally, investors were passive participants in the Earn Rewards Accounts' launch and the profits of each Plaintiff, and the Class were intertwined with those of Defendants and of other investors. Celsius concedes that it uses the funds from the CEL tokens to also fund its operations.

121. Defendants also were responsible for supporting the Earn Rewards accounts, pooled investors' assets, and controlled those assets.

122. Further, Defendants held and/or hold a significant stake in the Earn Rewards accounts, and thus shared in the profits and risk of the project.

iii. Investors Purchased the Celsius Financial Products with a Reasonable Expectation of Profit from Owning Them

123. Investors in the Earn Rewards Accounts, including Plaintiff and the Class, made their investment with a reasonable expectation of profits. The Earn Rewards accounts were sold to investors prior to a network or “ecosystem” being fully developed on which they could be used. For pre-functional tokens, such as the Earn Rewards accounts, the primary purpose for purchasing Earn Rewards accounts was to make a profit or accumulate additional “reflections” (*i.e.*, additional tokens of value), rather than to utilize the Earn Rewards accounts themselves for a task.

iv. Investors Expected Profits from the Earn Rewards accounts to Be Derived from the Managerial Efforts of the Executive Defendants

124. Investors’ profits in the Earn Rewards accounts were to be derived from the managerial efforts of others – specifically the Company and the Executive Defendant. Earn Rewards Account Investors relied on the managerial and entrepreneurial efforts of the Executive Defendants to manage, oversee, and/or develop the projects funded by sale of the Earn Rewards accounts.

125. Purchasers of pre-functional tokens necessarily rely on the managerial efforts of others to realize value from their investments. The success of these managerial efforts in developing the networks on which these tokens will operate is the primary factor in their price, that is, until such tokens transition into being functional utility tokens.

126. Each of the Earn Rewards accounts was a security at issuance because profit from the Earn Rewards accounts would be derived primarily from the managerial efforts of Celsius’ teams developing the associated networks on which the Earn Rewards accounts would function, rather than having their profit derived from market forces of supply and demand, such as might affect the price of a commodity such as gold (or Bitcoin).

127. Investors in Earn Rewards accounts relied on the managerial and entrepreneurial efforts of Celsius and the Executive Defendants to manage, market, and develop the so-called Celsius ecosystem.

128. The Executive Defendants typically held themselves out to investors as experts in the blockchain and crypto field. Investors in the Earn Rewards accounts reasonably expected the Celsius development teams to provide significant managerial efforts after the Earn Rewards accounts' launch.

129. Investors in Earn Rewards accounts thus reasonably expected the Company and Executive Defendants to provide significant managerial efforts after the token launch.

130. This dependency, however, on the managerial efforts of the Company and Executive Defendants was not apparent at issuance to a reasonable investor. Considering the limited available information about how these Earn Rewards accounts were designed and intended to operate, if such an investor were even able to interpret the relevant law at the time, a reasonable investor lacked sufficient bases to conclude whether the Earn Rewards accounts were securities until the platform at issue, and its relevant "ecosystem," had been given time to develop. In the interim, the investor lacked the facts necessary to conclude – let alone formally allege in court – that the tokens she had acquired were securities. It was only after certain revelations that provided more information about Defendants' intent, Celsius' token economics, and how the Executive Defendants operated to hide their ownership in both the Company and the CEL Token, that an investor could reasonably determine that a token that was advertised as something other than a security was a security all along.

3. Investors Would Not Reasonably Have Understood that the Financial Products Sold by Celsius Were Securities

131. In connection with the launch of the Celsius Financial Products, the Company and Executive Defendants made statements that reasonably led Plaintiff and Class members to conclude that the Celsius Financial Products were not securities.

132. As a threshold matter, the Company refused to register any of the Celsius Financial Products with the SEC, which indicated to investors that these were not securities. In fact, Celsius touts its application for an exemption from registrations as if it is an actual exemption, which it is not. No such valid exemption from registration requirements exists for any of the Celsius Financial Products.

133. At the time of the launch of the Celsius Financial Products, Defendants took advantage of the market's lack of understanding and awareness concerning how cryptocurrency projects – particularly decentralized finance projects – work. Considering the new technology at issue and the Company's other statements, many investors were understandably unaware that Celsius Financial Products had fundamentally different features than other cryptocurrencies, which the SEC has determined are not securities.

134. Moreover, the Celsius project was advertised as developing revolutionary and cutting edge blockchain technology that was “high yield” and “low risk” when compared with other existing products.

135. In addition to claiming Celsius' technical superiority over other cryptocurrencies, the Company also indicated that it would benefit financially and use the funds raised through the sale of the Celsius Financial Products to continue to fund the Celsius-related products (*e.g.*, wallet and exchange) and support the growth of the project.

136. At the time the Celsius Financial Products were publicly released, Defendants took advantage of the market's lack of understanding and awareness concerning how this investment contract worked. With promises that Celsius would outperform other cryptocurrencies, many individuals were unaware that the Celsius Financial Products had fundamentally different features than other cryptocurrencies, including being more centralized than Bitcoin or Ethereum. One of these primary differences is that all CEL Tokens were issued by Mashinsky and the Company at creation at very little economic cost – and enormous potential upside – to them.

137. The creation of the Celsius Financial Products occurred through a centralized process, in contrast to Bitcoin and Ethereum. This however would not have been apparent at issuance to a reasonable investor. Rather, it was only after the passage of time and disclosure of additional information about the issuer's intent and process of management that a reasonable purchaser could have known that he or she had acquired a security. Purchasers were thereby misled into believing that the Celsius Financial Products were something other than a security, when it was a security.

138. Accordingly, it was not apparent to a reasonable investor, at issuance, that the Celsius Financial Products were securities under the law, and a reasonable investor would not have believed they were securities.

4. Guidance from the SEC

i. The SEC's 2019 Framework

139. On April 3, 2019, the SEC published its "Framework for 'Investment Contract' Analysis of Digital Assets" (the "Framework") in which it provided "a framework for analyzing

whether a digital asset is an investment contract and whether offers and sales of a digital asset are securities transactions.”⁵⁸

140. The Framework described how to analyze the various facts surrounding an ICO in making the determination of whether a given digital asset is a security.

141. In particular, the Framework provides that the “inquiry into whether a purchaser is relying on the efforts of others focuses on two key issues: Does the purchaser reasonably expect to rely on the efforts of an [Active Participant or “AP”]? Are those efforts ‘the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise,’ as opposed to efforts that are more ministerial in nature?”⁵⁹

142. The Framework further notes that the “stronger the[] presence” of the following factors, “the more likely it is that a purchaser of a digital asset is relying on the ‘efforts of others.’”⁶⁰

143. The first factor the SEC looked at was whether an AP is responsible for the development, improvement (or enhancement), operation, or promotion of the network, particularly if purchasers of the digital asset expect an AP to be performing or overseeing tasks that are necessary for the network or digital asset to achieve or retain its intended purpose or functionality.

144. At the time of the Celsius Token launch, Defendants actively marketed the token launch and the Celsius project, thereby necessitating the continued managerial efforts of the Company and Executive Defendants. Where the network or the digital asset is still in development and the network or digital asset is not fully functional at the time of the offer or sale, purchasers

⁵⁸ <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets> (last visited Jul. 12, 2022).

⁵⁹ *Id.*

⁶⁰ *Id.*

would reasonably expect an AP to further develop the functionality of the network or digital asset (directly or indirectly).

145. Another factor the Framework considers is whether the AP creates or supports a market for, or the price of, the digital asset. This includes, *inter alia*, whether the AP “(1) controls the creation and issuance of the digital asset; or (2) takes other actions to support a market price of the digital asset, such as by limiting supply or ensuring scarcity, through, for example, buybacks, ‘burning,’ or other activities.”⁶¹

146. As noted above, all of the CEL Tokens in circulation were created at the direction of Mashinsky.

147. The framework further states that “An AP has a continuing managerial role in making decisions about or exercising judgment concerning the network or the characteristics or rights the digital asset represents[.]”⁶²

148. Here, the Company and Executive Defendants have discussed the long-term prospects on years-long time frames, continually noting how the Celsius ecosystem will “evolve” in the future.

149. The ability to determine whether and where the digital asset will trade is another factor discussed in the Framework. For example, “purchasers may reasonably rely on an AP for liquidity, such as where the AP has arranged, or promised to arrange for, the trading of the digital asset on a secondary market or platform.”⁶³

150. Here, the Company and Mashinsky are the liquidity providers for the CEL Tokens that are traded publicly.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

151. Another factor the Framework notes is whether the AP has the ability to determine who will receive additional digital assets and under what conditions. This could be, for example, “[m]aking or contributing to managerial level business decisions, such as how to deploy funds raised from sales of the digital asset.”⁶⁴

152. Here, the Company, along with the Controlling Defendants, are the arbiters over the use of the cryptocurrency deposited on Earn Rewards investors.

153. The Celsius Terms provide that an Earn Rewards investor relinquishes control over the deposited cryptocurrency to Celsius and that Celsius is free to use those assets as it sees fit, including commingling the Earn Rewards investor’s cryptocurrency with those of other Earn Rewards investors, investing those pooled assets in the market, and lending them to institutional and corporate borrowers. Having relinquished control over the deposited cryptocurrency in their Earn Rewards accounts, the Earn Rewards Investors are passive investors.

154. Specifically, Paragraph 4. D. “Earn Rewards” of the recently-amended Celsius Terms provides:

Our Earn Rewards service allows you to earn a financing fee from Celsius, referred to as “Rewards,” in the form of Digital Assets (either in-kind, i.e. in the same Digital Asset you transfer, or in CEL Tokens, where permitted) in exchange for entering into open-ended loans of your Eligible Digital Assets to Celsius under the terms hereof. If our Earn Service is available to you, upon your election, you will lend your Eligible Digital Assets to Celsius you grant Celsius all rights and title to such Digital Assets, for Celsius to use in its sole discretion while using the Earn Service.⁶⁵

155. Paragraph 13 of Celsius’ recently-amended Terms, “Consent To Celsius’ Use of Digital Assets,” also describes the status of cryptocurrency deposited with Celsius by Earn Rewards Investors:

⁶⁴

Id.

⁶⁵

<https://celsius.network/terms-of-use> (last visited Jul. 12, 2022).

In consideration for the Rewards payable to you on the Eligible Digital Assets using the Earn Service, for us entering into any Loan Agreement, and the use of our Services, you grant Celsius, subject to applicable law and for the duration of the period during which you elect to utilize the Eligible Digital Assets in the Earn Service (if available to you), all right and title to such Eligible Digital Assets, including ownership rights, and the right, without further notice to you, to hold such Digital Assets in Celsius' own Virtual Wallet or elsewhere, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership, and for any period of time, and without retaining in Celsius' possession and/or control a like amount of Digital Assets or any other monies or assets, and to use or invest such Digital Assets in Celsius' full discretion. You acknowledge that with respect to the Digital Assets used by Celsius pursuant to this paragraph:

- (i) You will not be able to exercise rights of ownership;
- (ii) Celsius may receive compensation in connection with lending or otherwise using Digital Assets in its business to which you have no claim or entitlement; and
- (iii) In the event that Celsius becomes bankrupt, enters liquidation or is otherwise unable to repay its obligations, any Eligible Digital Assets used in the Earn Service or as collateral under the Borrow Service may not be recoverable, and you may not have any legal remedies or rights in connection with Celsius' obligations to you other than your rights as a creditor of Celsius unders any applicable laws.⁶⁶

156. Celsius then pools the deposited cryptocurrencies together with Celsius' other assets, to, among other income-generating activities, collateralize Celsius' borrowings, purchase securities and digital assets for Celsius' own account, make loans to institutional and corporate borrowers, and mine for cryptocurrency.

157. Celsius does not disclose to investors: (a) the amount of money devoted to each of these investment activities; (b) the nature and creditworthiness of the borrowers, as well as the identity of any borrowers to whom Celsius has lent material amounts of cryptocurrency; (c) the

⁶⁶ *Id.*

terms and duration of the loans; (d) the types of securities and digital assets it trades; or (e) the profits or losses derived from these activities.

158. As Celsius' founder, Alexander Mashinsky, stated in an article he authored on March 7, 2021, for the DataDrivenInvestor's website, reposted in the "Media" tab on the Celsius Website, "[u]sers transfer assets with Celsius, Celsius lends funds to institutions and returns up to 80% of earnings to users."⁶⁷

159. Making other managerial judgements or decisions that will directly or indirectly impact the success of the network or the value of the digital asset generally.

160. The Framework also remarks that purchasers would reasonably expect the AP to undertake efforts to promote its own interests and enhance the value of the network or digital asset, including, but not limited to, the instances where the AP "has the ability to realize capital appreciation from the value of the digital asset. This can be demonstrated, for example, if the AP retains a stake or interest in the digital asset."⁶⁸ According to the SEC, in these instances, "purchasers would reasonably expect the AP to undertake efforts to promote its own interests and enhance the value of the network or digital asset."⁶⁹

161. Here, Mashinsky and Company insiders retain a significant interest in the Celsius project even after selling off many CEL Tokens throughout the Relevant Period.

ii. SEC's Previous Statements and Findings

162. On May 7, 2021, on CNBC's "Squawk Box" television program, chairman of the SEC Gary Gensler stated that "a lot of crypto tokens – I won't call them cryptocurrencies for this

⁶⁷ Alex Mashinsky, *How Celsius creates prosperity for retail and institutional investors alike*, DataDrivenInvestor (Mar. 7, 2021), <https://medium.datadriveninvestor.com/how-celsius-creates-prosperity-for-retail-and-institutional-investors-alike-cc086084c6bd>

⁶⁸ See fn.42, *supra*.

⁶⁹ *Id.*

moment – *are indeed securities*[.]”⁷⁰ (Emphasis added). In addition to being the Chairman of the SEC, Mr. Gensler is also a world-renowned expert on cryptocurrencies and blockchain technology, having taught the “Blockchain and Money” course at the Sloan School of Management at the Massachusetts Institute of Technology (“MIT”).⁷¹

163. In a June 14, 2018 speech entitled “Digital Asset Transactions: When Howey Met Gary (Plastic)” that is available on the SEC’s website, the following observations were made on “when a digital transaction may no longer represent a security offering.”⁷²

164. If the network on which the token or coin is to function is sufficiently decentralized – where purchasers would no longer reasonably expect a person or group to carry out essential managerial or entrepreneurial efforts – the assets may not represent an investment contract. Moreover, when the efforts of the third party are no longer a key factor for determining the enterprise’s success, material information asymmetries recede. As a network becomes truly decentralized, the ability to identify an issuer or promoter to make the requisite disclosures becomes difficult, and less meaningful.

165. “And so, when I look at Bitcoin today, I do not see a central third party whose efforts are a key determining factor in the enterprise. The network on which Bitcoin functions is operational and appears to have been decentralized for some time, perhaps from inception.”⁷³

⁷⁰ Jesse Point, *SEC Chairman Gary Gensler says more investor protections are needed for bitcoin and crypto markets*, CNBC (May 7, 2021), <https://www.cnbc.com/2021/05/07/sec-chairman-gary-gensler-says-more-investor-protections-are-needed-for-bitcoin-and-crypto-markets.html>.

⁷¹ Lectures and Materials from Chairman Gensler’s MIT course are available to the public for free at: <https://ocw.mit.edu/courses/sloan-school-of-management/15-s12-blockchain-and-money-fall-2018/video-lectures/session-1-introduction/>.

⁷² William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, Remarks at the Yahoo Finance All Markets Summit: Crypto, SEC (Speech) (Jun. 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

166. A key factor in determining whether a digital asset is a security or not is whether there is a centralized entity behind the digital asset.⁷⁴

167. As discussed above, the circumstances surrounding the creation of the Celsius Token demonstrate that an exceedingly small number of centralized insiders maintained exclusive control over the Celsius project.

168. Finally, the SEC also already concluded that another virtual currency (*i.e.*, DAO tokens) that is substantially similar to Earn Rewards accounts are “securities and therefore subject to the federal securities laws.” As stated by the SEC, “issuers of distributed ledger or blockchain technology-based securities must register offers and sales of such securities unless a valid exemption applies.”⁷⁵

169. Stablecoins in particular have come under scrutiny by regulators recently given the rapid growth of the \$130 billion market.

170. For example, in June 2021 Representative Warren Davidson from Ohio, one of crypto’s loudest advocates on Capitol Hill, said that in his view, not all stablecoins should be treated as securities, but stablecoins that specifically are backed by securities should fall under the same sort of regulatory regime: “if you’ve got a stablecoin that is essentially backed by securities, it gets hard to say that it’s not a security.”⁷⁶

⁷³ *Id.*

⁷⁴ *Id.* (noting that the “decentralized structure” of Bitcoin and Ethereum placed these digital assets outside the “disclosure regime of the federal securities laws”).

⁷⁵ Press Release, *SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities*, SEC (July 25, 2017), <https://www.sec.gov/news/press-release/2017-131>.

⁷⁶ Nikhilesh De, *Opinion – State of Crypto: Stablecoin Rules Are Coming*, CoinDesk.com (Jul. 20, 2021), <https://www.coindesk.com/policy/2021/07/20/state-of-crypto-stablecoin-rules-are-coming/>.

171. While certain of Celsius’ loan products appear to be licensed under various state licensing requirements for money services businesses or money transmitters, the Celsius Earn Rewards product is not currently registered with any federal or state securities regulator, nor is it exempt from registration – as required by law, even though the Earn Rewards product is a “security” and subject to such requirements.

CLASS ALLEGATIONS

172. Plaintiff brings this action, individually, and on behalf of a nationwide class, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

All persons who, during the Class Period, purchased Celsius Financial Products and were subsequently damaged thereby.

173. The Class Period is defined as the period between February 9, 2018 and the date of this filing.⁷⁷

174. Excluded from the Class are: (a) Defendants; (b) Defendants’ affiliates, agents, employees, officers, and directors; (c) Plaintiff’s counsel and Defendants’ counsel; and (d) the judge assigned to this matter, the judge’s staff, and any member of the judge’s immediate family. Plaintiff reserves the right to modify, change, or expand the various class definitions set forth above, based on discovery and further investigation.

175. **Numerosity**: Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identity of individual members of the Class is currently unknown, such information being in the sole possession of Luna and/or third parties and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis

⁷⁷ Plaintiff reserves the right to expand or amend the Class Period based on discovery produced in this matter.

alleges, that the Class consists of at least hundreds of people. The number of Class members can be determined based on Luna's and other third party's records.

176. **Commonality**: Common questions of law and fact exist as to all members of the Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

- a. whether the Celsius Financial Products are securities under the Securities Act;
- b. whether the sale of Celsius Financial Products violates the registration of the Securities Act;
- c. whether Defendants improperly and misleadingly marketed Celsius Financial Products;
- d. whether Defendants' conduct violates the state consumer protection statutes asserted herein;
- e. whether Individual Defendants conspired to artificially inflate the price of the Celsius Financial Products and then sell their Celsius Financial Products to unsuspecting investors;
- f. whether Defendants have been unjustly and wrongfully enriched as a result of their conduct;
- g. whether the proceeds that Defendants obtained as a result of the sale of Celsius Financial Products, rightfully belongs to Plaintiff and Class members;
- h. whether Defendants should be required to return money they received as a result of the sale of Celsius Financial Products to Plaintiff and Class members;
- i. whether Individual Defendants breached the implied covenant of good faith and fair dealing; and

j. whether Plaintiff and Class members have suffered damages, and, if so, the nature and extent of those damages.

177. **Typicality**: Plaintiff has the same interest in this matter as all Class members, and Plaintiff's claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiff's and Class members' claims all arise out of Luna's uniform misrepresentations, omissions, and unlawful, unfair, and deceptive acts and practices related to the sale of Celsius Financial Products.

178. **Adequacy**: Plaintiff has no interest that conflicts with the interests of the Class and are committed to pursuing this action vigorously. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiff and his counsel will fairly and adequately protect the interests of the Class.

179. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by the Company's conduct. It would be virtually impossible for individual Class members to effectively redress the wrongs done to them. Even if Class members could afford individualized litigation, the court system could not. Individualized litigation would increase delay and expense to all parties, and to the court system, because of the complex legal and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief for similarly situated individuals. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

180. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

Unregistered Offering and Sale of Securities in Violation of Sections 5 and 12(a)(1) of the Securities Act (Against the Celsius Entities and Individual Defendant Mashinsky)

181. Plaintiff restates and realleges all preceding allegations above as if fully set forth herein.

182. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this complaint, and further alleges as follows:

183. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interest commerce for the purpose of sale or for delivery after sale.

184. Celsius Financial Products are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

185. Plaintiff and members of the Class purchased Celsius Financial Product securities.

186. No registration statements have been filed with the SEC or have been in effect with respect to any of the offerings alleged herein. No exemption to the registration requirement applies.

187. SEC Rule 159A provides that, for purposes of Section 12(a)(2), an “issuer” in “a primary offering of securities” shall be considered a statutory seller. 17 C.F.R. §230.159A(a). The Securities Act in turn defines “issuer” to include every person who issues or proposes to issue any security. 15 U.S.C. §77b(a)(4). Celsius is an issuer of Celsius Financial Products.

188. The U.S. Supreme Court has held that statutory sellers under §12(a)(1) also include “the buyer’s immediate seller” and any person who actively solicited the sale of the securities to plaintiff and did so for financial gain. *See Pinter v. Dahl*, 486 U.S. 622, 644 n.21, 647 (1988); *accord, e.g., Steed Fin. LDC v. Nomura Sec. Int’l, Inc.*, No. 00 Civ. 8058, 2001 WL 1111508, at *7 (S.D.N.Y. Sept. 20, 2001). That is, §12(a)(1) liability extends to sellers who actively solicit the sale of securities with a motivation to serve their own financial interest or those of the securities owner. *Pinter*, 486 U.S. at 647; *Capri v. Murphy*, 856 F.2d 473, 478 (2d Cir. 1988). Celsius and the Defendants are all statutory sellers.

189. By reason of the foregoing, Defendants violated Sections 5(a), 5(c), and 12(a) of the Securities Act, 15 U.S.C. §§77e(a), 77e(c), and 771(a).

190. As a direct and proximate result of Defendants’ unregistered sale of securities, Plaintiff and the Class have suffered damages in connection with their Celsius Financial Product purchases.

SECOND CAUSE OF ACTION

Violation of Sections 10b of the Securities Act and Rule 10b-5 (Against all Defendants)

191. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-179, and further alleges as follows:

192. Plaintiff brings this claim for violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78j(b), and Rule 10b-5(b) promulgated thereunder, 17 C.F.R. §240.10b-5(b).

193. Plaintiff brings this claim on behalf of all Class members who purchased Celsius Financial Products from February 9, 2018 to the time of this filing.

194. The Celsius Financial Products are securities within the meaning of Section 2(a)(1) of the Securities Act, 15 U.S.C. §77b(a)(1).

195. Section 10(b) and Rule 10b-5(b) make it illegal, in connection with the purchase or sale of any security, “for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange . . . to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” *Id.*

196. Defendants carried out a plan, scheme, and course of conduct that Celsius intended to and did deceive the retail investors - Plaintiff and the other Class members - who acquired Celsius Financial Products pursuant to the March 2021 launch offering and thereby caused them to purchase Celsius Financial Products at artificially inflated prices.

197. In connection with the March 2021 launch of Celsius Financial Products, Defendants disseminated, approved, and/or endorsed the false statements described herein, which these Defendants knew or recklessly should have known were materially misleading in that they contained material misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not materially misleading.

198. Defendants employed devices, schemes, and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary to make the statements made not misleading; and engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the Class members that resulted in artificially high market prices for Celsius Financial

Products in connection with the March 2021 launch, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Misrepresentations and Omissions

199. Defendants' untrue statements and omissions of material facts in connection with the sale of Celsius Financial Products include at least the following:

a. On February 5, 2021, Mashinsky made several statements promoting the Celsius Loans to investors. In particular, when an investor asked about the circumstances under which Celsius will liquidate a borrower's collateral, Tal Bentov, the VP Lending (Retail) at Celsius, replied: "We liquidate only when someone is not answering our margin calls and he/she keeps being in default. We give a lot of time. A lot more than others. Trust me. Sometimes weeks to answer our margin calls!"⁷⁸ Near the end of the February 5th AMA, Mashinsky promoted the Earn Rewards Accounts' ability to "earn" investors various cryptocurrencies "for free."⁷⁹ In order to make those statements not misleading, Defendants were obligated to disclose that (1) borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice, and (2) that the yield rate offered by Celsius was not "free" but rather was provided off of highly risky, yet undisclosed, investments by Celsius.

b. On February 26, 2021, Mashinsky participated in the weekly Celsius AMA on YouTube, discussing, among other things, how Celsius would deal with "handling flash crashes." Mashinsky stated:

We don't provide high LTV's. . . . Celsius doesn't make money by liquidating you. We don't charge any fees. We don't try to give you these gimmicks and special rates. . . . Our goal, our mission is to make sure that we have you as a customer for life. What are the chances that you're going to stick with us if we liquidated you? Most of

⁷⁸ <https://www.youtube.com/watch?v=2wqD78AnFaw> (last visited Jul. 12, 2022).

⁷⁹ *Id.*

our loans are 25% or 33% LTV loans. We discourage you from taking 50% LTV loans because that is much higher risk. ***So Celsius did not have any liquidations, because we give you plenty of time. We give you advanced notice most of the time, then we tell you you can put more collateral or return some of the dollars or assets back.*** We have almost 0 liquidations. That’s not our business. It’s the opposite of our business.⁸⁰

In order to make those statements not misleading, Defendants were obligated to disclose that borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice.

c. On April 23, 2021, Mashinsky again made statements regarding Celsius’ borrower-friendly stance on liquidations during a Celsius weekly AMA on YouTube. In particular, Mashinsky stated a “margin call doesn’t mean we sold your assets or stole your coins. That’s what the other guys do. ***We always give you ample time*** to post more collateral, return some of the assets, or instruct us to sell your coins.”⁸¹ (Emphasis added). In order to make this statement not misleading, Defendants were obligated to disclose that borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice.

d. On May 28, 2021, Mashinsky promoted the stability and wherewithal of the CEL Token: “Looking at coins, the CEL token was one of the most stable out there. It did better than Bitcoin or Ethereum. It did not drawdown as much. Obviously Celsiusians who held CEL did very well as well.”⁸² Mashinsky congratulated the investors that held onto their CEL Tokens during the brief market downturn and bragged that there were “only 20 liquidations” from the 10,000 margin calls that occurred during that time period because Celsius “does a better job than most. Accommodating, providing enough warning, giving you enough time for doing what’s right. We

⁸⁰ <https://www.youtube.com/watch?v=cZPy7Pu6vxg&t=3s> (last visited Jul. 12, 2022).

⁸¹ <https://www.youtube.com/watch?v=bzEyHLgBY7Y&t=350s> (last visited Jul. 12, 2022).

⁸² <https://www.youtube.com/watch?v=C7d7rZUEfGo> (last visited Jul. 12, 2022).

don't make any money from liquidating you.”⁸³ Mashinsky proclaimed that “during these drawdowns is when Celsius shines, both from the fact that it does not crash [CEL]. I think NEXO token was down about 75% from top to bottom just last week. So those are examples of just a different community. A HODL community versus a speculative community. Same thing with Binance and other platforms. Obviously, we only care about doing what's in the best interests of the HODLer.”⁸⁴ In order to make those statements not misleading, Defendants were obligated to disclose that (1) borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice, and (2) that the CEL Token was far from stable but rather subject to severe volatility because of Company insider selling pressure.

e. On October 9, 2021, Mashinsky stated the following: “Lots to CELebrate here in #London busy week with a lot of large deals and events. It pays to #HODL.”⁸⁵ In order to make those statements not misleading, Defendants were obligated to disclose that, when this statement was made, Mashinsky intended to (and later did) actually sell a portion of his CEL Tokens.

f. On December 1, 2021, Celsius held an AMA session on YouTube where investors could ask questions of Celsius representatives. One investor expressed concern about a “CEL token liquidation cascade” and asked whether Celsius was “worried at all,” to which Celsius content manager Zachary Wildes replied “I’m personally not . . . I do think we need to bring a lot more time and attention and focus to CEL token and its utilities. I’m not concerned about a cascading liquidation event where everyone gets destroyed.”⁸⁶ Wildes continued that “We’re at a low-point for CEL sentiment and the future of the token” and asked Mashinsky if there was “any level of

⁸³

Id.

⁸⁴

Id.

⁸⁵

See fn.38, *supra*.

⁸⁶

See fn.18, *supra*.

reassurance we can give . . . to the community to show our commitment to CEL token?”⁸⁷ Mashinsky responded that “Earning in CEL allows you to earn twice as many CEL right now with the price lower. If you believe in the viability of the company, then you would know you’re getting a 50% discount. If you don’t believe in it, then you probably don’t want these CELs anyway. If you’re not sure about it, how about some of the worlds best investors coughing up 750\$ Million? They bought into half of all the CEL tokens out there. Our Treasury, which is mostly CEL token. They’re part owners of that”⁸⁸ In order to make those statements not misleading, Defendants were obligated to disclose that (1) borrowers did not have flexibility of options when receiving a margin call, but rather faced immediate liquidation without proper notice; (2) that there was a significant risk that a CEL Token liquidation cascade not only could happen, but was likely to happen in the near future; (3) that the Company’s successes would not automatically lead to a 50% increase in the CEL Token price in the future; and (4) that Celsius did not, in fact, have the support of well-capitalized backers or the ability to maintain the Company’s operations in the event of a price collapse.

g. On December 9, 2021, Mashinsky posted a message on his Twitter account, promoting CEL Tokens as a long-term investment for Company insiders and stating: “All @CelsiusNetwork founders have made purchases of #CEL and are not sellers of the token.”⁸⁹ In order to make those statements not misleading, Defendants were obligated to disclose that only five days earlier Mashinsky sold over 11,000 CEL Tokens for about \$43,000 worth of WBTC.

h. On January 19, 2022, Mashinsky made a series of statements regarding the CEL Token and how it was poised for future growth in use and, more importantly, price. For

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See* fn.39, *supra*.

example, when asked about how Celsius generates revenue, Mashinsky responded that “***We always make all of our money from institutions*** . . . We don’t charge fees, spreads, all of that stuff.”⁹⁰ In order to make that statement not misleading, Defendants were obligated to disclose that depositing digital assets into Earn Rewards Accounts was not akin to depositing money into a savings account and that the profit comes from the Company searching of yield with corporate funds via leveraged positions in DeFi protocols with severe liquidation risk.

Materiality

200. The forgoing misrepresentations and omissions were each material. These representations related to critical issues concerning the security of Celsius Financial Product holders’ investments.

201. These misrepresentations and omissions related to, among other things: (i) the extent to which the Defendants and other insiders were restricted from selling substantial amounts of Celsius Financial Products on crypto-asset exchanges; (ii) the extent to which Defendants and its insiders intended to sell their Celsius Financial Product holdings over that same period; and (iii) the extent to which Defendants and its insiders did in fact sell substantial amounts of their Celsius Financial Products crypto-asset exchanges over that same period while simultaneously promoting the same securities as long-term investments. If a reasonable investor knew that the Company and the Executive Defendants were engaging in highly speculative investments in a volatile crypto market to earn the yield necessary to make good on its promises to investors, then that investor would reasonably expect the price of Celsius Financial Products to be substantially lower, given that the investment would be much riskier.

202. Accordingly, there is a substantial likelihood that the disclosure of the omitted facts would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.

⁹⁰ See fn.27, *supra*.

Scienter

203. The Company and Executive Defendants acted with scienter in engaging in the forgoing misconduct, in that they either had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

204. Indeed, the Company and the Executive Defendants created and controlled the software that determined whether they would have the ability to retain control over funds staked in the Earn Rewards Accounts and CEL Token liquidity pool and whether they could draw on those funds. They have likewise admitted that they intentionally decided to retain control over funds supposedly “locked” in liquidity pools because they wanted to provide themselves with flexibility to pay for expenses that could arise in the future.

205. Defendants knew before the 2018 launch that any applicable vesting periods would not preclude the Executive Defendants or their friends and family dumping massive quantities of Celsius Financial Products on the market and Celsius intended to transfer millions of the newly issued Celsius Financial Products to project insiders, and that it, along with those insiders, intended to dump tens of millions of these tokens on crypto-asset exchanges, such that Celsius and its insiders intended to profit massively from the offering, while outside investors would be precluded from doing so.

206. Indeed, Defendants necessarily knew what restrictions were imposed on their own CEL Tokens, as well as the tokens that they issued and allocated to current and former team members, and to outside investors. These Defendants likewise knew that they, along with current and former team members, held a significant amount of the total CEL Token supply in circulation, and that if that portion of the Float were sold, the price of the CEL Tokens would plummet and likely cause the collapse of the other Celsius Financial Products. It was thus highly unreasonable for Defendants to conceal information relating to selling restrictions imposed on them and their insiders’ tokens.

207. Defendants' failure to disclose such information, coupled with their constant promotion of the Celsius Financial Products as being "low risk," demonstrates that these Defendants intended that they and their insiders would sell substantial amounts of CEL Tokens at significant profits at a price that was artificially inflated on and during the weeks and months that followed the CEL Token launch.

208. The Company and the Executive Defendants had the motive not to disclose these facts because such disclosure would have been self-defeating. They controlled a significant proportion of Celsius Financial Products, and such a disclosure would decrease the value of those assets. In other words, they had an incentive to ensure that the price of Celsius Financial Products remained inflated.

209. These Defendants executed on that plan, too, by (along with current and former team members) selling billions of Celsius Financial Products on the market during that period.

210. Defendants knew that they had sold Celsius Financial Products on the market on and in the months that followed the Company's launch. They likewise know that their current and former team members sold Celsius Financial Products: in addition to Mashinsky's admission of selling some of his CEL Token holdings, Defendants know which CEL Tokens they allocated to team members and can therefore track the transaction history of that CEL Token on the blockchain.

Reliance, Economic Loss, and Loss Causation

211. As a result of the publication and dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the price of the Celsius Financial Products upon issuance on February 9, 2018, and for a period of time, thereafter, were artificially inflated.

212. In ignorance of the fact that the price of Celsius Financial Products was artificially inflated, and relying directly or indirectly on the false, misleading, and materially incomplete statements that Defendants made and approved, or upon the integrity of the market in which the Celsius Financial Products were sold, or on the absence of material adverse information that these Defendants knew or recklessly should have known of but failed to disclose in public statements,

Plaintiff and the other Class members acquired Celsius Financial Products at artificially high prices and were damaged thereby.

213. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other Class members suffered damages in connection with the respective purchases of Celsius Financial Products and are entitled to an award compensating them for such damages.

214. Indeed, the price of CEL Tokens dropped significantly as Defendants disclosed, and the market discovered, the truth concerning the CEL Tokens project and its prospects. For example, the price of CEL Tokens went from a high of \$7.73 on June 3, 2021, to a low of \$0.28 just over a year later on June 12, 2021, in the wake of the June Crisis and Celsius freezing its investors accounts.

215. In addition, as a direct and proximate result of Defendants' wrongful conduct, Celsius has generated and retained ill-gotten gains in connection with the launch of Celsius Financial Products, such that Plaintiff and the other Class members are entitled to the disgorgement of Celsius' ill-gotten gains acquired from such misconduct.

216. As a direct and proximate result of Defendants' unregistered sale of securities, Plaintiff and the Class have suffered damages in connection with their Celsius Financial Product purchases.

THIRD CAUSE OF ACTION

Violation of Sections 20(a) of the Securities Act (Against the Celsius Entities and Defendant Mashinsky)

217. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

218. This Count is asserted against the Executive Defendants (collectively, the "Control Person Defendants") under Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a).

219. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and

as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person Defendants, and each of them, had the power and influence and exercised the same to cause the unlawful scheme to artificially increase the interest in and price of the Celsius Financial Products, particularly the CEL Token.

220. The Control Person Defendants, separately or together, possess, directly or indirectly, the power to direct or cause the direction of the management and policies of Celsius, through ownership of voting securities, by contract, subscription agreement, or otherwise.

221. The Control Person Defendants also have the power to direct or cause the direction of the management and policies of Celsius.

222. The Control Person Defendants, separately or together, have sufficient influence to have caused the Company to engage in the fraudulent conduct described above.

223. The Control Person Defendants, separately or together, jointly participated in the Company's fraudulent conduct described above.

224. By virtue of the conduct alleged herein, the Control Person Defendants are liable for the wrongful conduct complained of herein and are liable to Plaintiff and the Class for rescission and/or damages suffered.

FOURTH CAUSE OF ACTION

Violation of Sections 20A of the Exchange Act (Against the Celsius Entities and Defendant Mashinsky)

225. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

226. Plaintiff brings this claim under Section 20A of the Exchange Act, 15 U.S.C. §78t-1, against Defendants on behalf of Class members who transacted in CEL Tokens contemporaneously with Defendants' transactions in Celsius Financial Products.

227. Plaintiff brings this claim on behalf of all Class members who purchased Celsius Financial Products from February 8, 2020, to the present.

228. Since 2018, the Celsius Entities and Defendant Mashinsky (collectively referred to in this cause of action as the “Section 20A Defendants”) have been in possession of material, non-public information about Celsius and its insiders, as set forth above with respect to the Section 20A Defendants’ violation of Section 10(b) and Rule 10b-5, while the Section 20A Defendants have been transacting in CEL Tokens. Section 20A Defendants have thus engaged in insider trading through which they have received at least millions of dollars in profits.

229. The material, non-public information about Celsius and its insiders that the Section 20A Defendants have failed to disclose, during some or all of the time in which they have been transacting in CEL Tokens since 2018, includes the details of any applicable vesting schedules for Celsius and Celsius insiders; that Defendant Mashinsky was not subject to any vesting schedule; that any applicable vesting periods would allow the Section 20A Defendants to transfer tens of millions of the newly issued CEL Tokens to crypto-asset exchanges; that the Section 20A Defendants intended to deposit tens of millions of these tokens on crypto-asset exchanges; that the Section 20A Defendants intended to profit massively from the offering; that the Section 20A Defendants reserved the right to liquidate their tokens far more than necessary to pay expenses; and that the Section 20A Defendants dumped massive amounts of CEL tokens on the market beginning on 2018.

FIFTH CAUSE OF ACTION

Violation of Sections 15 of the Securities Act (Against all the Executive Defendants)

230. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

231. This Count is asserted against the Executive Defendants (collectively referred to in this cause of action as the “Control Person Defendants”) under Section 15 of the Securities Act, 15 U.S.C. §77o.

232. The Control Person Defendants, by virtue of their offices, ownership, agency, agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The Control Person Defendants, and each of them, had the power and influence and exercised the same to cause the unlawful offer and sale of Celsius Financial Products securities as described herein.

233. The Control Person Defendants, separately or together, possess, directly or indirectly, the power to direct or cause the direction of the management and policies of Celsius, through ownership of voting securities, by contract, subscription agreement, or otherwise.

234. The Control Person Defendants also have the power to direct or cause the direction of the management and policies of the Company.

235. The Control Person Defendants, separately or together, have sufficient influence to have caused Celsius Financial Products and/or the Company to submit a registration statement.

236. The Control Person Defendants, separately or together, jointly participated in Celsius’ failure to register Celsius Financial Products.

237. By virtue of the conduct alleged herein, the Control Person Defendants are liable for the wrongful conduct complained of herein and are liable to Plaintiff and the Class for rescission and/or damages suffered.

SIXTH CAUSE OF ACTION

Unjust Enrichment/Restitution (New Jersey Common Law, in the Alternative) (Against the Celsius Entities)

238. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

239. Plaintiff and members of the Class conferred a monetary benefit on Defendants by raising the price and trading volume of the Celsius Financial Products, which allowed Defendants to sell their Celsius Financial Products to Plaintiff and Class members at inappropriately and artificially inflated prices.

240. Defendants received a financial benefit from the sale of their Celsius Financial Products at inflated prices and are in possession of this monetary value that was intended to be used for the benefit of, and rightfully belong to Plaintiff and members of the Class.

241. Plaintiff seeks restitution in the form of the monetary value of the difference between the purchase price of the Celsius Financial Products and the price those Celsius Financial Products sold for.

SEVENTH CAUSE OF ACTION

Declaratory Judgment (Declaratory Judgment Act, N. J. S. A. 2A:16-51 *et seq.*) (Against the Celsius Entities)

242. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates herein by reference paragraphs 1-217, and further alleges as follows:

243. This Count is asserted against the Celsius Entities under Section 2A:16-59 of the New Jersey Revised Statutes.

244. The Declaratory Judgments Act, N.J. Stat. Ann. § 2A:16-51 *et seq.* (West), authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity. *Chamber of Com. of U. S. v. State*, 89 N.J. 131, 140 (1982). To maintain such an action, there must be a “justiciable controversy” between adverse parties, and plaintiff must have an interest in the suit.

245. Plaintiff and the members of the Class have an obvious and significant interest in this lawsuit.

246. Upon information and belief, each class member who purchased a Celsius Loan product in exchange for a promissory note received a loan agreement that contained misrepresentations and/or omissions of material fact that were made negligently or with the intent to deceive investors about the risks underlying the Celsius Loans.

247. Plaintiff and class members justifiably relied on the representations by the Celsius entities that the Celsius Loans were a “low risk” way to “earn” interest and that, in the event of a margin call, borrowers would have ample time and opportunity to address the underlying issue.

248. If the true facts had been known, Plaintiff and the class would not have purchased a Celsius Loan from the Company and/or would have not purchased the Celsius Loan under the same terms.

249. There is, thus, a justiciable controversy over the legality and enforceability of the Celsius Loan products offering.

250. Plaintiff seeks an order from the Court declaring that all current and/or open Celsius Loans are (a) unauthorized; (b) wrongfully and fraudulently entered into; and as a result (c) void and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, respectfully requests that this Court:

A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more of the Classes defined above;

- B. Appoint Plaintiff as a representative of the Class and his counsel as Class counsel;
- C. Declare that the Company and Executive Defendants offered and sold unregistered securities in violation of Sections 5(a), 12(a), and 15 of the Securities Act;
- D. Declare that all Celsius Loans currently held by the Company are void and unenforceable, and issue an order directing Celsius to rescind any outstanding Celsius Loans;
- E. Award all actual, general, special, incidental, statutory, rescission, punitive, and consequential damages and restitution to which Plaintiff and the Class members are entitled;
- F. Award post-judgment interest on such monetary relief;
- G. Grant appropriate injunctive and/or declaratory relief;
- H. Award reasonable attorneys' fees and costs; and
- I. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiff, individually and on behalf of the putative Class, demands a trial by jury on all issues so triable.

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